

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 40935 of 2017

(Arising out of Order-in-Original Sl. No. 16/2017 (Commissioner-CE) dated 08.03.2017 passed by the Commissioner of Central Excise, No. 1, Foulks Compound, Anai Road, Salem – 636 001)

M/s. Ponni Sugars (Erode) Limited
Odappalli, Cauvery R.S., P.O.,
Erode – 638 007

: Appellant

VERSUS

Commissioner of Central Excise
No. 1, Foulks Compound, Anai Road,
Salem – 636 001

: Respondent

APPEARANCE:

Shri M.N. Bharathi, Advocate for the Appellant

Shri Harendra Singh Pal, Authorized Representative for the Respondent

CORAM:

HON'BLE MRS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40931 / 2023

DATE OF HEARING/DECISION: 18.10.2023

Order : [Per Hon'ble Mrs. Sulekha Beevi C.S.]

Brief facts of the case are that the appellant is engaged in the manufacture of 'sugar' and 'molasses' and are availing CENVAT Credit on inputs and input services. It was noticed by the Department that the appellant had contravened the provisions of Rule 6 of the CENVAT Credit Rules, 2004 inasmuch as they did not maintain separate accounts for the common input services used in the manufacture of both dutiable and exempted products. The appellants were clearing the bagasse and pressmud (exempted products), which emerged during the manufacture of the final product viz., sugar.

2. The Department was of the view that for the period from 01.10.2014 to 31.07.2015, the appellant has to pay an amount of 6% of the value of exempted products (bagasse / pressmud) in view of Rule 6(3)(i) of the CENVAT Credit Rules, as amended.

3. Show Cause Notice Sl. No. 33/2015 C.Ex. dated 21.04.2015 came to be issued to the appellant proposing to demand 6% of the value of exempted products along with interest and for imposing penalties.

4. After due process of law, the original authority vide order impugned herein confirmed the demand, interest and imposed penalties.

5. Aggrieved by such order, the appellant is now before the Tribunal.

6.1 Shri M.N. Bharathi, Ld. Counsel, appeared and argued for the appellant. It is submitted by him that for the period prior to 01.03.2015, the issue stands covered by the decision of the Hon'ble Apex Court in the case of *Union of India v. DSCL Sugar Ltd. [2015 (322) E.L.T. 769 (S.C.)]* wherein the Hon'ble Apex Court has held that bagasse / pressmud cannot be considered as exempted goods as these are not manufactured by an assessee; consequent to the decision of the Hon'ble Apex Court, an amendment was introduced in the CENVAT Credit Rules, 2004 with effect from 01.03.2015 by way of an Explanation, whereby it was provided that when non-excisable goods are cleared for a consideration, they have to be treated as exempted goods manufactured by an assessee and therefore, the CENVAT Credit has to be reversed in case common inputs/input services are used.

6.2 The Ld. Counsel also submitted that for the period after 01.03.2015, the Board had issued Circular No. 1027/15/2016-CX. dated 25.04.2016 in line with the above Explanation stating that an assessee has to reverse the credit availed on common inputs/input services used for

manufacturing dutiable as well as non-excisable products which are treated to be exempted goods. It is pointed out that the said Circular was challenged before the Hon'ble High Court of Allahabad in the case of *Balrampur Chini Mills Ltd. v. Union of India* [2019 (368) E.L.T. 276 (All.)] and the Hon'ble High Court had quashed the said Circular; it was also observed by the Hon'ble High Court that though the Explanation states that non-excisable goods are to be treated as exempted goods, it cannot be construed that bagasse/pressmud are manufactured by an assessee. As per Rule 6(1), the credit is to be reversed on exempted goods manufactured by an assessee.

6.3 He would also contend that the very same decision of the Hon'ble High Court was followed by the Tribunal in the case of *Khedut Sahakari Khand Udyog Mandli Ltd. v. Commissioner of Central Excise and Service Tax, Vadodara-II* [2022 (4) TMI 1360 – CESTAT, Ahmedabad] (Order No. A/10387/2022 dated 28.04.2022 in Excise Appeal No. 12997 of 2018-SM – CESTAT, Ahmedabad) and the demand was set aside.

6.4 The Ld. Counsel thus prayed that the appeal may be allowed.

7. The Ld. Authorized Representative Shri Harendra Singh Pal appeared and argued for the Department. The findings in the impugned order were reiterated.

8. Heard both sides.

9. The issue involved in the present appeal is whether the appellant is liable to pay an amount equivalent to 6% of the value of the bagasse / pressmud cleared by them.

10. The Explanation 1 to Rule 6 of the CENVAT Credit Rules, which was inserted with effect from 01.03.2015, reads as under:-

"Explanation 1. - For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory."

11. In terms of the above Explanation which was introduced with effect from 01.03.2015, the appellant has to reverse the credit or pay 6% of the value of the exempted products in case non-excisable goods are cleared for a consideration. The Board had also issued a Circular in line with the above Explanation. However, the said Circular came to be challenged before the Hon'ble High Court of Allahabad in the case of *Balrampur Chini Mills Ltd. (supra)* and the same was held to be invalid and quashed. The relevant portion of the said decision of the Hon'ble Allahabad High Court reads as under: -

"27. After the aforesaid judgment which has clearly held Bagasse not to be a manufactured product, and therefore Rule 6 of the Cenvat Credit Rules, 2004 shall have no application, Section 6(1) has been amended by inserting the 2 Explanations, which the respondent contends is sufficient to include Bagasse within the fold of Section 6, and further to justify the stand for a reversal of Cenvat Credit Rules, 2004.

28. A perusal of the Explanation 1 to Rule 6 would indicate that it provides that the exempted goods and final product as defined in Clauses (d) & (h) of Rule 2 shall include non-excisable goods cleared for a consideration from the factory.

29. Explanation 1, talks about the inclusion of non-excisable goods cleared for consideration from the factory within the category of exempted goods or final products while the Circular dated 25-4-2016 proceeds on the basis that Bagasse is a non-excisable goods and is now to be treated like exempted goods for the purpose of a reversal of input and Input service.

30. As noted by the Hon'ble Supreme Court in the case of Union of India and Others v. M/s. DSCL Sugar Ltd. and Others (supra) specifically in the context of Bagasse, Rule 6 applies only when there is a manufacture of final products or of exempted products, and if there is no manufacture, Rule 6 of the Cenvat Credit Rules, 2004, has no application.

31. *This amendment may have the effect of treating Bagasse to be an exempted goods, but cannot result in Bagasse being manufactured goods, as the nature of Bagasse remains that of an agricultural waste and residue and is not in effect a product. This aspect and character of Bagasse remains unaltered by insertion of Explanation 1.*

32. *In absence of Bagasse being a manufactured final product, the obligation of a reversal of Cenvat period under Rule 6(1) of the Cenvat Credit Rules, 2004 is not attracted. It has also been noticed that Bagasse has always been an "exempted goods" under Rule 2(d) of the Cenvat Credit Rules, 2004. It has been mentioned in Central Excise Tariff Heading 2303 20 000 and was subjected to NIL rate of duty. It therefore, fell within the definition of "exempted goods" as defined under Rule 2(d) and is not a non-excisable goods, as mentioned in the impugned circular.*

33. *That the Circular dated 25-4-2016 interpreting Explanation 1 to Rule 6 has provided that "consequently, Bagasse, dross and skimmings of non-ferrous metal or any such by-product of waste, which are non-excisable goods and are cleared for consideration from the factory need to be treated like exempted goods for purpose of reversal of credit of input and input services, in terms of Rule 6 of the Cenvat Credit Rules, 2004. The circular therefore treating Bagasse to be a non-excisable goods, is clearly erroneous, and for this reason also the Circular dated 25-4-2016 is liable to be quashed with regard to Bagasse.*

34. *In light of the above we are of the considered opinion that in absence of Bagasse being a manufactured final product, the obligation of reversal of Cenvat Credit under Rule (1) of the Cenvat Credit Rules, 2004 is not attracted, and the ratio laid down in the judgment of the Hon'ble Supreme Court in the case of Union of India and others v M/s. DSCL Sugar Ltd and Others (supra) still holds the field. Rule 6 of the Cenvat Credit Rules would have no application for reversal of Cenvat Credit in relation to Bagasse. The Circular No. 1027/15/2016-CX, dated 25-4-2016, contained in Annexure-1 to the writ petition to the extent that it includes Bagasse under the purview of the reversal of credit of input services in terms of Rule 6 of the Cenvat Credit Rules, 2004, as well as the impugned show cause notice dated 24-3-2017 contained in Annexure-2, are hereby quashed."*

12. The Tribunal in a recent decision in the case of *Khedut Sahakari Khand Udyog Mandli Ltd. (supra)* has followed the above decision of the Hon'ble Allahabad High Court to set aside the demand.

13. After appreciating the facts and following the ratio laid down in the above decisions, we are of the considered opinion that the demand cannot sustain and requires to be set aside, which we hereby do.

14. The impugned order is set aside.

15. The appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in the open court)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sdd