CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Stay Application No.70217 of 2021
(On behalf of Revenue) **IN**
Excise Appeal No.70666 of 2021

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/287/2020-21 dated 31/03/2021 passed by Commissioner (Appeals) Central Goods & Services Tax, Meerut)

Principal Commissioner of Central Goods & Services Tax, Meerut **.....Appellant**
(Mangal Pandey Nagar, Meerut-250001)

VERSUS

M/s SBEC Sugar Ltd., **....Respondent**

(Loyan Malakpur, Baraut Baghpat-250611)

WITH

Miscellaneous Application Nos.

1. **Excise Stay Application No.70218 of 2021 IN Excise Appeal No.70667 of 2021 (CCE & CGST, Meerut-I Vs M/s SBEC Sugar Ltd.);**
2. **Excise Stay Application No.70219 of 2021 IN Excise Appeal No.70668 of 2021 (CCE & CGST, Meerut-I Vs M/s SBEC Sugar Ltd.);**
3. **Excise Stay Application No.70220 of 2021 IN Excise Appeal No.70669 of 2021 (CCE & CGST, Meerut-I Vs M/s SBEC Sugar Ltd.);**

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/287/2020-21 dated 31/03/2021 passed by Commissioner (Appeals) Central Goods & Services Tax, Meerut)

APPEARANCE:

Shri Manish Raj, Authorised Representative for the Appellant
Shri Nagendra Krishna, Advocate for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.70114-70117/2024

DATE OF HEARING : 22 December, 2023
DATE OF DECISION : 22 December, 2023

SANJIV SRIVASTAVA:

These appeals are filed by the revenue against Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/287/2020-21 dated 31/03/2021 passed by Commissioner (Appeals) Central Goods & Services Tax, Meerut. By the impugned order, following has been held-

> *"6. In view of the above discussion and findings, the appeal filed by the Assistant Commissioner, CGGST Division-Shamli against the impugned Order-in-Original No 10-13/AC/D-SML/2020-21 dated 30.09.2020 passed in the case of M/s SBEC Sugar Ltd. Village- Malakpur, Baraut, Baghpat (U.P.) is rejected."*

2.1 Respondents are engaged in manufacture of excisable goods namely sugar, molasses, ethyl alcohol/ rectified spirit, denatured ethyl alcohol & Fusal oil. They are also availing the CENVAT Credit of the duties/ taxes paid on inputs, capital goods and input services.

2.2 A show cause notices as detailed below were issued to the respondent for the demand and recovery of amount payable in terms of Rule 6 of the CENVAT Credit Rules, 2004, in respect of the clearances/ sale of Bagasse and Press Mud for the period December , 2016 to June, 2017.

S No	Show Cause Notice			Amount 'Rs
	Number	Date	Period	
1	V(30)/Adj/CEx/D-SML/SBEC/94/18/736	14.11.2018	Dec 16 to Jan 17	42,20,769/-
2	V(30)/Adj/CEx/D-SML/SBEC/143/18/844	01.01.2019	Feb 17	24,89,608/-
3	V(30)/Adj/CEx/D-SML/SBEC/175/18-19/957	29.03.2019	Mar 17	25,34269/-
4	V(30)/Adj/CEx/D-SML/SBEC/05/19-20/119	06.05.2019	Apr 17 to June 17	27,33,680/-

2.3 These show cause notice have been adjudicated as per the order in original No 10-13/AC/D-SML/2020-21 dated 30.09.2020. The appeal filed by the revenue against this order has been dismissed by the impugned order.

2.4 Aggrieved revenue has filed this appeal stating following grounds.

> *"The Order-in-Appeal No .MRT/EXCUS/000/APPL-MRT/287/ 2020-21 dated 31.03.2021 passed by the Commissioner (Appeals), Central Goods and Services Tax (Appeals), Meerut in the case of M/s SBEC Sugar Limited, Vill-Malakpur, Baraut, Distt. Baghpat, Uttar Pradesh does not appear to be legal and proper on statutory terms as well as in terms of facts and circumstances of the subject case, on the following grounds:-*
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> *1. In terms of Rule 6 of the CENVAT Credit Rules, 2004, in a case in which common inputs, or input services, of the duty, or service tax, paid whereon CENVAT credit had been taken, were used in the manufacture of dutiable, and exempted goods, or taxable, and exempted, services, the manufacturer, or service provider had, before him, the following options, viz. either*
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> *(i) to maintain separate accounts for receipt, consumption and inventory of the quantity of inputs, and input services, meant for use in the manufacture of dutiable, and exempted goods, or providing of taxable, and exempted output services, and take CENVAT credit only of the duty, or service tax, paid on that quantity of input, or input service, which was intended for use in the manufacture of dutiable goods, or in providing output service on which service tax was payable [Rule 6(2)], or*
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> *(ii) if the manufacturer of goods, or provider of output service, opted not to maintain separate accounts, then, either*

(a) to pay an amount equal to 6% of the value of exempted goods (in case of a manufacturer) and of value of exempted services (in case of a service provider) [Rule 6(3)(i)], or

(b) to pay an amount equal to the proportionate CENVAT credit attributable to inputs, and input services used in, or in relation to, the manufacture of exempted goods, or providing of exempted services, subject to the conditions and procedures stipulated in Rule 6(3A) [Rule 6(3)(ii)].

2. The said party did not maintain separate records/accounts in respect of inputs and input services used in the manufacture of exempted goods namely Bagasse & Press-Mud during the relevant period. Thus, they were required to choose any of the options given in Rule 6(3) of CENVAT Credit Rules, 2004 prevailing during the relevant period. However, the said party neither paid an amount equal to 6% of the value of exempted goods nor reversed proportionate credit attributable to inputs/input services used for the manufacture of exempted goods as envisaged under the said Rule 6(3) of CENVAT Credit Rules, 2004.

3. Rule 6 of the CENVAT Credit Rules, 2004 was amended vide Notification No.6/2015-CE(NT) dated 01.03.2015 in as much as in sub-rule (1), after the proviso, the following Explanations were inserted, namely:-

"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.

Explanation-2 Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the

principles of valuation contained in the Excise Act and the rules made thereunder.

4. The Commissioner (Appeals) in his subject Order-in-Appeal dated 31.03.2021 has observed that the issue involved in the instant case stood decided by the Hon'ble Apex Court in the case of M/s DSCL Sugars [2015(322)ELT769 (SC)] and in doing so he appeared to have erred in taking note of the significant fact that the said judgment dated 24.07.2015 related to case(s) before the said amendment in Rule 6 of the CENVAT Credit Rules, 2004, so affected vide the said Notification No.6/2015-CE(NT) dated 01.03.2015, whereas the period involved in the instant case was from December, 2016 to June, 2017. It was post the said judgment of the Hon'ble Apex Court in the case of M/s DSCL Sugars [2015(322)ELT769 (SC)] that the Board had vide its Circular No. 1027/15/2016-CX dated 25.04.2016 clarified that with the insertion of the said two Explanations "Bagasse, Dross and Skimmings of non-ferrous metals or any such by-product or waste, which were non-excisable goods and were cleared for a consideration from the factory needed to be treated like exempted goods for the purpose of reversal of credit of input and input services, in terms of Rule 6 of the CENVAT Credit Rules, 2004".

5. The Commissioner (Appeals), Meerut in his subject Order-in-Appeal dated 31.03.2021 has also observed that the appeal filed by the department against the judgement of the Hon'ble High Court, Allahabad in the case of Balrampur Chini Mills vs UOI [2019(368)ELT 276 (All)] had already been dismissed by the Hon'ble Apex Court on 21.01.2021. However, the Commissioner (Appeals) has failed to take into cognizance the fact that the Hon'ble Supreme Court has not dismissed the appeal of the Department on merits but the same has been dismissed on the grounds of time limitation in as much as there was a

delay of 426 days in filing Special Leave Petition against the Hon'ble High Court's order.

6. In the matter it is noteworthy to mention that in the case of M/s Indian Sucrose Limited Vs UOI [CWP No. 10018 of 2018 (O&M)] the Hon'ble High Court of Punjab and Haryana at Chandigarh vide its decision dated 04.03.2020 has allowed the appeal of the said Petitioner but therein has also observed that "In this view of the matter and in view of the categoric statement made by the learned counsel for the petitioner, we allow this writ petition in the same terms as the above judgment with liberty to the Revenue to file an application for review in case the assertion regarding the judgment having been permitted to become final is not correct". In respect of the said Order dated 04.03.2020 the Department has filed SLP (C) [No. 001700/2021; Diary No. 585/2021] in the Hon'ble Supreme Court.

7. The instant appeal is being filed in terms of Para 4 of CBEC's Instruction bearing F. No. 390/Misc./116/2017-JC dated 22-8-2019 read with Para 1.3 of CBEC's Instruction bearing F. No. 390/Misc/163/2010-JC dated 17.08.2011 wherein it has been stipulated and specified that:

1.3. Adverse judgments relating to the following should be contested irrespective of the amount involved:

(a) Where the constitutional validity of the provisions of an Act or Rule is under challenge

b) Where Notification/ Instruction Order or Circular has been held illegal or ultra vires

In the instant case, substantive question of law is involved in as much as Commissioner (Appeals) vides his Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/287/2020-21 dated 31.03.2021 has dropped the demand by primarily placing reliance on the said Judgment of the Hon'ble Apex Court in the case of M/s DSCL. Sugars [2015(322)ELT769 (SC)]

without taking note of the significant fact that the said judgment dated 24.07.2015 related to case(s) before the said amendment in Rule 6 of the CENVAT Credit Rules, 2004, so affected vide the said Notification No.6/2015-CE(NT) dated 01.03.2015, whereas the period involved in the instant case was from December, 2016 to June, 2017. Further, the Commissioner (Appeals) has also observed that the appeal filed by the department against the judgement of the Hon'ble High Court, Allahabad in the case of Balrampur Chini Mills vs UOI [2019(368)ELT 276 (All)], wherein the Circular No. 1027/15/2016-CX dated 25.04.2016 had been quashed with regard to Bagasse, has already been dismissed by the Hon'ble Apex Court but he had failed to note that that the Hon'ble Supreme Court has not dismissed the appeal of the Department on merits but the same has been dismissed on the grounds of time limitation. Further, as above, in the matter the appeal of Department in the case of M/s Indian Sucrose Limited is still pending for decision before the Hon'ble Supreme Court.

3.1 I have heard Shri Manish Raj, Authorized Representative for the revenue and Shri Nagendra Krishna, Advocate for the respondent.

3.2 Arguing for the revenue learned authorized representative reiterates the ground taken in the appeal memo.

3.3 Arguing for the respondent learned counsel reiterate the findings recorded in the impugned order, and submits that issue is squarely covered by the decision of Hon’ble Apex Court in case of DSCL Sugar Ltd and the decision of Hon’ble Allahabad High Court in the case of Balrampur Chinni Mills

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records following findings:

"5. I have carefully gone through the records of the case, grounds of appeal and the submissions made by the respondent. I find that the issue involved in the present appeal stands decided by the Hon'ble Apex Court in the case of M/s DSCL Sugars [2015(322) ELT 769 (SC)]. Besides, the Commissioner (Appeals), Meerut had already set aside the demands for the previous period, vides OIA No.MRT/EXCUS/000/APPL-MRT/374/2018-19 dated 26.11.2018 (hereinafter referred to as the "OIA") in the respondent's own case and the appeal filed by the department against the OIA had already been rejected by the Hon'ble CESTAT vides its Final Order no. 71111/2019 dated 18.06.2019. Further, in a catena of cases, it had been consistently held that the provisions of Rule 6 of CCR were not applicable in the case of bagasse and press-mud which emerged during the process of manufacture of sugar. The issue of applicability of amended provisions of Rule 6 of the Rules, and Board's Circular No. 1027/15/2016-CX dated 25.04.2016 w.e.f. 01.03.2015 was no more open for decision in the present appeal. I also find that the appeal filed by the department against the judgement of the Hon'ble High Court, Allahabad in the case of Balrampur Chini Mills vs. UOI [2019 (368) E.L.T. 276 (All) had already been dismissed by the Hon'ble Apex Court on 21.01.2021. The adjudicating authority had, therefore, rightly dropped the demands. The appeal filed by the appellant department is, therefore, without any substance and merit."

4.3 In this regard, I find that Hon'ble Supreme Court in the case of UOI vs DSCL Sugars [2015 (32) ELT 769 (SC)] has been held as under:

"10. *In the present case it could not be pointed out as to whether any process in respect of Bagasse has been specified either in the Section or in the Chapter notice. In the absence thereof this deeming provision cannot be attracted. Otherwise, it is not in dispute that Bagasse is only an*

agricultural waste and residue, which itself is not the result of any process. Therefore, it cannot be treated as falling within the definition of Section 2(f) of the Act and the absence of manufacture, there cannot be any excise duty.

11. *Since it is not a manufacture, obviously Rule 6 of the Cenvat Rules, 2004, shall have no application as rightly held by the High Court."*

4.4 Relying on the decision of Hon'ble Supreme Court in case DSCL Sugar referred in the impugned order, Hon'ble Allahabad High Court has in the case of Balrampur Chinni Mills [2019 (368) E.L.T. 276 (All.)], held as follows:

"18. The main argument of the petitioner with regard to the challenge of the Circular dated 25-4-2016 is that despite the insertion of Explanation 1 with effect from 1-3-2015, the Legislature has not removed the basis on which the judgment of the Hon'ble Supreme Court dated 24-7-2015 was pronounced, and therefore despite the amendment treating certain non-excisable goods as exempted goods or final products, Bagasse would not be treated to be an exempted goods for the purpose of reversal of credit of input in terms of Rule 6 of the Cenvat Credit Rules, 2004 and still the condition of "manufacture" of the exempted goods would be required.

19. Rule 6 of the Cenvat Credit Rules, 2004, as it existed prior to 28-2-2015, is as follows :-

"RULE 6. Obligation of a manufacturer or producer of final products and a provider of output service. —

(1) The Cenvat credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for exempted services, except in the circumstances mentioned in sub-clause (2).

(2) Where a manufacturer or provider of output service avails of Cenvat credit in respect of any inputs or input services, and manufactures such final products or provides

such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and invertory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take Cenvat credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow either of the following options as applicable to him, namely :-

(i) the manufacturer of the goods shall pay an amount equivalent to five per cent of the value of the exempted goods and the provider of output service shall pay an amount equal to six per cent of the value of the exempted services; or

(ii) ……."

20. The Union of India amended Cenvat Credit Rules, 2004 with effect from 1-3-2015 by inserting [Explanations 1 and 2 in Rule 6(1), which 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.

Explanation 2. - Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the

principles of valuation contained in the Excise Act and the rules made thereunder."

21. A perusal of Rule 6(1) clearly shows that the manufacturer has to manufacture dutiable goods as well as exempted goods. Since Bagasse is not manufactured goods but the waste product which emerges/comes into existence in the process of manufacture of sugar, and therefore the production of Bagasse cannot be held to be manufacture of exempted goods.

22. Rule 6(2) provides that where a manufacturer avails of Cenvat credit in respect of any inputs and manufactures such final products which are chargeable to duty as well as exempted goods, the manufacturer shall maintain separate accounts for the same, and in an inventory of input meant for use in the manufacture of dutiable final product and the quantity of input meant for the use in the manufacture of exempted goods.

23. As per Rule 6(3) the manufacturer of dutiable final product and the manufacturer of exempted goods who does not maintain separate accounts shall be liable to pay an amount of 5% of the value of the manufactured goods.

24. The Hon'ble Supreme Court in the case of Union of India and Others v. M/s. DSCL Sugar Ltd. and Others (supra), held that Bagasse is not a manufactured product but an agricultural waste and residue, which itself is not the result of any process. It is relevant to point out that in the said judgment the Hon'ble Court also considered the amendment in Section 2(d) wherein in the definition of "excisable goods" were duly amended to include any article or material substance capable of being bought or sold for consideration and as such could/shall be deemed to be marketable, and therefore the fiction was introduced wherein certain kinds of goods were treated to be marketable and thus excisable.

25. Considering the aforesaid amendment Hon'ble Supreme Court in Union of India and Others v. M/s. DSCL Sugar Ltd. and Others (supra) held :-

"However, before the aforesaid fiction is to be applied, it is necessary that the process should fall within the definition of "manufacture" as contained in Section 2(f) of the Act."

26. The Hon'ble Supreme Court also considered the definition of "manufacture" as provided in Section 2(f) of the Act wherein there is a deeming provision a mounting to manufacture in respect of certain goods, and specifically with regard to Bagasse and held as under :-

"In the present case it could not be pointed out as to whether any process in respect of Bagasse has been specified either in the section or in the chapter notice. In the absence thereof this deeming provision cannot be attracted. Otherwise, it is not in dispute that Bagasse is only an agricultural waste and residue, which itself is not the result of any process. Therefore, it cannot be treated as falling within the definition of section 2(f) of the Act and [in] the absence of manufacture, there cannot be any Excise duty.

Since it is not a manufacture, Rule 6 of the Cenvat Credit Rules, 2004, shall have an application rightly held by the High Court."

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 contest 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."

4.5 The circular dated 25.04.2016 which is the backbone of the appeal filed by the revenue has been quashed by the jurisdictional high court. Further revenue has relied upon the decision of Hon'ble Punjab and Haryana High Court. I do not find any merits in the said submission of the revenue as the issue needs to be considered in light of the decision of the jurisdictional High Court. Thus, we do not find any merits in this appeal filed by the revenue.

5.1 Appeals are dismissed. Stay applications are also disposed of.

(Dictated and pronounced in open court)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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