IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/52198/2015-EX[SM]

(Arising out of Order-in-Appeal No.91-C/APPL-LKO/LKO/2015 dated 16/03/2015 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

M/s Simbhaoli Sugars Ltd. **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Lucknow **Respondent**

Appearance:

Shri Kapil Vaish (C.A.) for Appellant
Shri Sandeep Kumar Singh (Dy.Commr.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 31/01/2018
Date of Decision : 31/01/2018

FINAL ORDER NO.- 70727/2018

Per: Anil Choudhary

The issue in this appeal is whether the appellant - assessee a manufacturer of Sugar & Molasses, who have used bagasse for production of electricity in its captive power generation unit, whether they are liable to reverse Cenvat credit under Rule 6(3) on the value of electricity supplied to the guest house and residential colony.

2. The Learned Counsel for the Appellant points out that the issue is no longer *res integra* and the same is covered by ruling of Hon'ble Supreme Court in the DSCL Sugar Ltd. 2015 (322) E.L.T. 769 wherein the Apex Court have held notwithstanding amendment in 2008 in Section 2 (d) of the Central Excise Act creating a fiction of deemed marketability, bagasse is not excisable as it is not passing test of manufacture. Further observed that waste and residue of agricultural produce and emergence of resultant waste and residue or Bagasse does not amount to manufacture being itself not result of any process, hence not excisable. Accordingly, it has further been held that there being no manufacturing process, Rule 6 of Cenvat Credit Rules, 2004 is not applicable. The denial of credit on electricity on the premise that Bagasse being excisable was held not sustainable and the provisions of Rule 6 of CCR not attracted.

3. For the same period in dispute i.e. April, 2007 to June, 2011 another show cause notice was issued on the appellant being SCN No.12/Commr./Alld./2012 dated 17/04/2012 wherein also demand was proposed under Rule 6(3) of Cenvat Credit Rules on the sale value of Bagasse and electricity. The said show cause notice was adjudicated vide Order-in-Original

No.LKO/EXCUS/000/COM/ST/17-66/2015–16 dated 30/09/2015 by the Commissioner observing that the show cause notice was issued on the premise that Bagasse for the excisable product attracting nil rate of duty under the heading – other products. Therefore, Cenvat credit was not admissible to the appellant on common input/input services used in the Bagasse produced in the sugar factory as it was considered exempted goods. Since the assessee was not maintaining separate records as under Rule 6(2) nowhere reversing the Cenvat credit as per the Rule 6(3) demand was made towards reversal of Cenvat credit. However, following the ruling of the Apex Court in the case of Balrampur Chini Mills Vs Union of India, the Learned Commissioner held that the show cause notice is not maintainable and in the teeth of the ruling of Hon'ble Supreme Court and accordingly was pleased to drop the show cause notice.

4. As the facts and circumstances are similar, Learned counsel prays for allowing the appeal with consequential benefits.

5. The Learned A.R. for Revenue have relied on the impugned order.

6. Having considered the rival contentions, I am satisfied that the appellant is not required to reverse any

amount for electricity used in their residential colony and guest house. Moreover it is also observed that the residences located adjacent to the factory premises, which is located in a remote location and meant for the workers working in the factory. Similarly guest house is also located adjacent to the factory premises and is used for the visiting officials and or other persons in connection with the business of the appellant company. Accordingly, it is further held that the use of electricity in the residential colony and in the guest house was also for business purposes and no reversal of input credit is required under Rule 6 of CCR, 2004.

7. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant shall be entitled for consequential benefits, in accordance with law.

(Dictated & Pronounced in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Lks