IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/442 & 678/2009-EX[DB]

(Arising out of Order-in-Original No. 28/Commissioner/Meerut-I/2009 dated 28/11/2008 passed by Commissioner of Central Excise & Customs, Meerut)

[IN APPEAL Nos.E/442/2009]

Commissioner of Central Excise, Meerut-I **Appellant**

Vs.

M/s Mohit Petro Chemicals Pvt. Ltd., **Respondent**

[IN APPEAL Nos.E/678/2009]

M/s Mohit Petro Chemicals Pvt. Ltd., **Appellant**

Vs.

Commissioner of Central Excise, Meerut-I **Respondent**

Appearance:

Shri Mohammad Altaf, Assistant Commissioner (AR) for Revenue
Ms Shreya Dahiya, Advocate, for Assessee

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 02/08/2018
Date of Decision : 02/08/2018

FINAL ORDER NOs-71826-71827/2018

Per: Archana Wadhwa

Both the appeals, one filed by the assessee and other filed by the revenue are being disposed of by a common order as they arise out of the same impugned order passed by Commissioner of Central Excise vide which he has confirmed the demand for the period prior 01.03.2005 and has dropped the same for the period from 01.03.2005 to 21.02.2007.

2. As per facts on record the appellants were engaged in the manufacture of Denatured Spirit, Rectified Spirit and Ethyl Natural Alcohol from the molasses brought out by them on duty payment. They availed the Cenvat credit of duty paid on the said Molasses and utilized the same in the manufacture of the three types of spirit. Whereas Special Denatured Spirit is excisable, no duty is required to be paid on the rectified spirit and Ethyl Natural Alcohol. Accordingly, the appellant utilized the credit for payment of duty on Special Denatured Spirit and cleared Rectified Spirit and Ethyl Natural Alcohol on payment of 8% or 10% of the value of the same in terms of Rule 6 (3) (b) of Cenvat Credit Rules.

3. Revenue entertained a view that instead of clearing the said spirits in terms of provisions of Rule 6 (3) (b), the assessee should have reversed the credit availed in respect of Molasses, which stands utilized in the manufacture of the said Spirit. Accordingly, proceedings were initiated, resulting in passing of the present impugned order vide which the denial of credit up to 01.03.2005 stands upheld by the Commissioner and for the period post 01.03.2005, the demand stands dropped. As such, both the sides are in appeal.

4. We find that an identical issue stands considered by the Tribunal in the case of Commissioner of Central Excise, Salem, Vs M/s Salem Co-Operative Sugar Mills Ltd. reported at 2016 (339) ELT 572 (Mad.) laying down that in respect of clearance of Rectified Spirit, Un-denatured Ethyl Alcohol and Ethyl Natural Alcohol, there was not even need to pay 8% or 10% of the value of the said goods in terms of the Rule 6 (3) (b). The Tribunal further observed that the said factual position would not even invite any reversal of Cenvat credit. To the same effect in the Tribunal's decision in the case of M/s Bajaj Hindusthan Sugar Ltd. Vs Commissioner of Central Excise, Lucknow reported at 2016 (340) ELT 535 (Tri.-All.) laying down that all the alcohols which result from the processing of molasses are identical and as such there was no need for any reversal of credit. The said finding of the Tribunal is based upon Hon'ble Supreme Court's decision in the case of State of Uttar Pradesh Vs Modi Distillery reported at 1996 UPTC 312 (SC).

5. Inasmuch as, the issue stands decided, we find no justifiable reason to uphold the demand even for the period up to 01.03.2005. The same is accordingly set aside and the appeal filed by the appellant is allowed.

6. As regards the revenue's appeal the same becomes infructuous, inasmuch as the demand even for the period prior to 01.03.2005 stands set aside and as such there is no

occasion of confirmation of any demand for the period post 01.03.2005.

7. Both the appeals are disposed of in the above manner.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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