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

APPEAL No.E/57589/2013-EX[SM]

(Arising out of Order-in-Original No. 34/COMMR/LKO/CX/2012-13 dated 02/03/2013 passed by Commissioner of Central Excise & Service Tax, Lucknow)

Commissioner of Central Excise, Lucknow	**Appellant**
Vs.	
M/s Haidergarh Chini Mills	**Respondent**

Appearance:

Shri Sandeep Kumar Singh, Deputy Commissioner (AR)	for Appellant
	for Respondent

CORAM:

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

Date of Hearing	:	30/01/2018
Date of Decision	:	30/01/2018

FINAL ORDER NO-72255/2018

Per: Anil Choudhary

The present appeal is directed against Order-in-Original No. 34/COMMR/LKO/CX/2012-13 dated 02/03/2013 passed by Commissioner of Central Excise & Service Tax, Lucknow.

2. The issue in this appeal filed by the revenue is whether the respondent-assessee, a manufacturer of sugar and molasses, who were using bagasse for generation of electricity, part of the generated electricity was wheeled outside and electricity being exempted from excise duty, whether the respondent is liable to reverse Cenvat credit on the electricity so wheeled out, under Rule 6 (3) of Cenvat

Credit Rules, 2004, relating to the period from November, 2010 to October, 2011. A show cause notice dated 02nd November, 2011 was issued demanding duty being the amount @ 5% on the electricity sold or wheeled out under the provisions of Rule 6 (3) of CCR, 2004.

2. The respondent-assessee had filed a writ petition before the Hon'ble High Court of Allahabad, challenging the show cause notice. Vide order dated 31.10.2012 Hon'ble High Court have disposed of a writ petition No.1133/2012, directed the respondent to file reply of show cause notice. Thereafter, reply to show cause notice was filed and by Order-in-Original dated 02nd March, 2013, the learned Commissioner has confirmed the demand of Rs.8,72,535/- under Rule 6 (2) of the CC Rules, on account of reversal to be made of Cenvat credit, which related to goods and services attributable to electricity, sold outside the factory, instead of demand of 5% as proposed in the SCN, under Rule 6 (3) and further penalty of Rs.10,000/- and Rs.6,09,230/- was imposed under Rule 15 of Cenvat Credit Rules, 2004. Being aggrieved, respondent-assessee preferred Writ Petition No.2134(M/B) of 2013 before the Hon'ble Allahabad High Court, challenging the Order-in-Original dated 02nd March, 2013 (impugned herein). The Hon'ble High Court by its judgment dated 04th July, 2013 have been pleased to hold that- "bagasse, which emerged as residue of sugarcane, was used as fuel in boiler for generation of steam for running turbine and boiling juice for

manufacture of sugar. The Turbine generated electrical energy which was used for running plant and machinery and surplus energy was sold. Bagasse was used as fuel in factory for the manufacture of final product and no specific input was used, up to stage of emerging of bagasse. It was held that the bagasse was waste and hence, it was not a manufactured exempted product. Further, electricity was not classifiable under Chapter 27 of Central Excise Tariff Act which covered electrical energy generated from sources other than bagasse. Electrical energy was neither excisable under Section 3 of CEA, 1944 nor exempted goods under Rule 2(d) of Cenvat Credit Rules, 2004. Thus, same was neither excisable nor exempted goods, hence Rule 6 of CCR was not applicable.

3. Heard the parties.

4. Having considered the rival contentions, I find that the issue have been decided by Hon'ble High Court in the favour of the appellant, in the ruling of M/s Gularia Chini Mills reported at 2014 (34) STR 175 (All.).

5. Accordingly, this appeal filed by revenue is dismissed, as infructuous.

(Dictated in Court)

(Anil Choudhary)
Member (Judicial)

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