

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.II

Excise Stay Application No.70150 of 2021

(On behalf of the Appellant)

In

Excise Appeal No.70444 of 2021

(Arising out of Order in Appeal No.190-CE-ALLD-2021, dated -16/07/2021
passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

Commissioner, CGST, Varanasi

.....Appellant

(9 Maqbool Alam Road, Near Zila Kutchahari, Varanasi
Uttar Pradesh, 221002)

VERSUS

M/s Hindalco Industries Ltd.

....Respondent

(Renukoot, Sonebhadra
Uttar Pradesh 231221)

APPEARANCE:

Shri A.K. Choudhary, Authorized Representative for the Appellant
Shri Atul Gupta, Advocate for the Respondent

CORAM: HON'BLE MR. S. K. MOHANTY, MEMBER (JUDICIAL)

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

MISCELLANEOUS ORDER NO.70233/2025

FINAL ORDER NO.-70654/2025

DATE OF HEARING : 20.08.2025
DATE OF DECISION : 20.08.2025

SANJIV SRIVASTAVA:

This Appeal and the Stay Application is directed against the Order-In-Appeal No. 190-CE-ALLD-2021, dated -16/07/2021 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad. By the impugned order Commissioner (Appeals) has allowed the appeal filed by the Respondent against Order-In-Original No.01/Ref./CE/2020 dated 02.06.2020.

2.1 The Respondent is engaged in manufacture and clearance of Aluminum and Aluminum products classifiable under Chapter 76 of the First Schedule of the Central Excise Act.

2.2 During the process of manufacture of aluminum certain quantity of dross is obtained as waste/residual/skimmings. The dross though not desired product is sold in the market against a value hence Revenue entertained an opinion that it is subject to Central Excise duty. Appellant paid duty under protest when they were asked to do so.

2.3 The issue with regards to excisability of the dross was finally settled in the case of Hindalco Industries Ltd. [2015 (315) ELT 10 (Bom)] This decision was affirmed by the Hon'ble Supreme Court as reported at [2019 (367) E.L.T. A246].

2.4 The Appellant applied for the refund claim of the duty paid under protest. A SCN dated 29.07.2016 was issue to the Appellant asking them to show cause as to why refund claim should not be denied/modified on the ground that

- the dross is to be treated like exempted goods for reversal of CENVAT Credit Rules, 2004;
- decision of the Hon'ble Bombay High Court referred earlier is challenged before the Hon'ble Supreme Court.

2.5 By Order-In-Original No.01/Ref./CE/2020 dated 02.06.2020 the refund claim of the amount of duty deposited on clearance of dross to the Respondent for the period October 2009 to 2015 was allowed. Refund claim for duty deposited under protest for the period 2015-16 was also allowed. However, this part of the refund amount was denied as reversal of CENVAT Credit during the said period under Rule 6 of the CENVAT Credit Rules. Para 5.12 & 5.16 of the order provides as follows:-

"5.15 W.e.f. 01.03.2015 the party have cleared Aluminium Dross valued at Rs. 26,57,49,622/-. The 6% of the said value comes to Rs. 1,59,44,977.32. Thus the party are liable to reverse the amount of Rs. 1,59,44,977/- and the same

has been deducted from the total amount of refund claim filed by the party.

5.16 In view of above, I find that out of total amount of refund claim of Rs.20,65,63,604/-, the party are eligible to refund of Rs. 20,65,63,604/- - Rs.1,59,44,977/- = Rs.19,06,18,627/-."

2.6 Aggrieved by the Order-In-Original Appellant filed appeal before Commissioner (Appeals) which has been decided as per the impugned order in favour of the Appellant.

2.7 Aggrieved Revenue filed this appeal alongwith the said application stating as follows:-

"8. *The appellate authority has ignored the fact that in the case of M/s Balarampur Chini Mills Ltd Vs Union of India the Hon'ble Allahabad High Court held that Cenvat Credit need not be reversed in respect of bagasse which is an agricultural waste and not a manufactured final product. The High Court held that the circular therefore treating Bagasse to be non excisable good, is clearly erroneous, and for this reason also the Circular dated 25.04.2016 is liable to be quashed with regard to Bagasse.*

9. (i). *The Commissioner (Appeals) has erred in not taking into consideration the fact that the Case was kept in the Call Book for the outcome of judgment of Hon'ble Supreme Court in the case of M/s Hindalco Industries Ltd and once the Judgment of Hon'ble Supreme Court was pronounce the refund claim was processed and eligible claim was sanctioned without any further delay.*

(ii) *The Commissioner (Appeals) has not appreciated the fact that the duty was paid under protest and the refund amount claimed consequent to the judgment of the Hon'ble Bombay High Court was sanctioned for the period prior to the amendment of Rule 6 of the Cenvat Credit Rules. The Refund eligible*

for the period prior to amendment was sanctioned and the remaining period of from March, 2015 to March, 2016 was not sanctioned as same was paid as applicable duty under protest. Hence separate demand notice was not required.

(iii) The Commissioner (Appeals) relied on the Judgment of Hon'ble High Court dated 12.04.2019 in case of M/s Balarampur Chini Mills vs Union of India which also relied on the judgment of Hon'ble Supreme Court dated 24.07.2015 in the case of Union of India vs M/s DSCL Sugar Ltd and others and held that Rule 6 of the Cenvat Credit Rules, 2004 would not be applicable for reversal of Cenvat Credit in relation to Bagasse and quashed CBIC Circular No. 1027/15/2016-CX dated 25.04.2016 to the extent that it includes Bagasse under the provisions of reversal of Credit in terms of Rule 6 of the Cenvat Credit Rules, 2004. However, this fact was ignored that the period involved in the Hon'ble Supreme Court judgment in case of DSCL Sugars Limited was prior to the amendment in Rule 6 of the Cenvat Credit Rules.

Vide Notification No.06/2015-Central Excise (NT) dated 01.3.2015 non-excisable goods were also brought within the ambit of Rules along with excisable goods as mentioned in Rules 2 (d) & (h) of the Cenvat Credit Rules, 2004 for the purpose of reversal of credit. As such, the Hon'ble Supreme Court had no occasion to examine and pass order on the provisions of Rule 6 of Cenvat Credit rules, 2004 as amended. The judgment of Hon'ble Supreme Court in the case of DSCL Sugar Ltd is based on the provisions existing prior to such amendment in Rule 6 on 01.3.2015. The judgment of the Hon'ble High Court in case of M/s Balarampur Chini Mill, relied upon by the Commissioner (Appeals) was pertaining to the period after such amendment. Therefore, the ration of the Hon'ble Supreme Court's

judgment in case of Union of India Vs M/s DSCL Sugar Limited and others is not applicable in this case. Thus, the Commissioner (Appeals) erred in relying on the judgment of Hon'ble High Court Allahabad in Balarampur Chini Mill case and also the judgment of Hon'ble Supreme Court in DSCL Sugar Limited case.

(iv) Further the Hon'ble High Court in Balarampur Chini Mill case in para 33 & 34 held that;

33. That the Circular dated 25/04/2016 interpreting Explanation 1 to Rule 6 has provided that "consequently, Bagasse, dross and skimming of nonferrous metal or any such byproduct 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 25/04/2016 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 Vs 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 25/04/2016, contained in Annexure 1 to the writ petition to the extent dated 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 24/03/2017 contained in Annexure-2, are hereby quashed.

From the judgment of the Hon'ble High Court, it is clearly mentioned that this Hon'ble High Court has quashed the circular with regard to Bagasse only whereas the Commissioner (Appeals) has erred in

considering it for all the goods mentioned in the circular."

3.1 We have heard Shri A. K. Choudhary, learned Authorized Representative for the Appellant and Shri Atul Gupta, learned Advocate for the Respondent.

4.1 We do not find any merits in the stay application filed by the Revenue as the same has been filed in a routine and mechanical manner and the same is without any merits. Accordingly, the Stay petition filed by the Revenue is dismissed being devoid of any merits.

4.2 Since we find that the issue is in a very narrow compass with the consent of both the sides appeal itself has been taken up for consideration and disposal.

4.3 The impugned order records the findings as follows:-

"5. Now I take up the second issue as to whether the appellant were liable to pay an amount equal to 6% of the value of Aluminum Dross cleared w.e.f 01.03.2015 under Rule 6(3)(i) of the CENVAT Credit Rules, 2004.

5.1 I find that Rules 6(1), 6(2) & 6(3) of the Credit Rules, as existed during the material period, provided, as under:

Rule6:(1)The cenvat credit shall not be allowed on such quantity of input used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input services used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services, except in the circumstances mentioned in sub-rule (2);

**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 nonexcisable 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.

inserted w.e.f.01.03.2015

(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 services which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output services shall maintain separate accounts for-

(a) the receipt, consumption and inventory of inputs used-

(i) in or in relation to the manufacture of exempted goods:

(ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;

(iii) for the provision of exempted services:

(iv) for the provision of output services excluding exempted services;

and

(b) the receipt and use of input services

(i) in or in relation to the manufacture of exempted goods and their clearance up to the place of removal;

(ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;

(iii) for the provision of exempted services; and

(iv) for the provision of output services excluding exempted services, and shall take CENVAT credit only on inputs under

sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses(ii) and (iv) of clause (b).

(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 any one of the following options, as applicable to him, namely:

(i) pay an amount equal to six percent of value of the exempted goods and exempted services, or

(ii) pay an amount as determined under sub rule (3A):
or

(iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule(2), take CENVAT credit only on inputs under sub clause (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clause (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment.

*Explanation II: For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the **manufacture of exempted goods** or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.*

5.1.1 From the aforesaid statutory provisions, it is clear that amount is required to be paid in terms of Rule 6(3) of the Credit Rules, in cases where the assessee is engaged in manufacture of such final products or provision of such output services which are chargeable to duty or tax as well as exempted goods or services, availing cenvat credit on common inputs or input services and also where he has not

[12:32 pm, 29/08/2025] NIHAL SINGH: maintained separate accounts for the receipt & use of common inputs or input services in terms of Rule 6(2) of the Credit Rules.

5.2 I find that the Hon'ble Supreme Court in the case of Union of India vs. DSCL Sugar Limited, reported as 2015 (322) ELT 769 (SC), held, inter alia, as under:

"5. However, show cause notices were issued to the respondents herein stating that Bagasse would be subject to duty under the Central Excise Act, 1944, as "other products". These show cause notices were issued to the respondents in terms of the provision contained in Rule 6(3) of the Cenvat Credit Rules, 2004 demanding various amounts. The said show cause notices were challenged by the respondents filing writ petitions in the High Court of Allahabad. The High Court has allowed these writ petitions holding that Bagasse being a waste and not a manufactured product, no duty is payable thereupon. For arriving at this conclusion, the High Court also have relied upon the judgment of this Court in Balrampur Chini Mills Ltd. in C.A. No. 2791 of 2005 decided on 21-7-2010 [2015 (320) E.L.T. A258 (S.C.)].

6. The aforesaid judgment was pronounced by this Court related to the period before 2008. In the year 2008 there was an amendment in Section 2(d) as well as in Section 2(f) of the Act which defines 'excisable goods' and 'manufacture' respectively. Section 2(d) with the said amendment reads as under:

Section 2(d) - "excisable goods" means goods specified in [The First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt; Explanation for the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable."

7. As per the aforesaid explanation, "goods" would now include any article, material or substance capable of being bought or sold for consideration and as such goods shall be deemed to be marketable. Thus, it introduces the deeming fiction by which certain kind of goods are treated as marketable and thus excisable.

8. 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. The relevant portion of amended Section 2(f) reads as under:

Section 2(f)-"manufacture" includes any process -

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) amounting to manufacture; or

(iii) which in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;

and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;"

9. The Revenue sought to cover the case under sub-clause (ii) as per which the process which is satisfied in relation to any goods in the Section or Chapter notices of the First Schedule to the Central Excise Tariff Act, 1985 would amount to 'manufacture'. Here again, fiction is created by including those goods as amounting to

manufacture in respect of which process is specified in the Section or Chapter notices of the First Schedule.

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 Credit Rules, 2004, shall have no application as rightly held by the High Court."

5.2.1 I also find that the Hon'ble CESTAT in the case of Chamundeswari Sugars Ltd . vs. CCE, Mysore 2013 (290) E.L.T. 271 (Tri.- Bang.), held as under:

Press-mud not a manufactured product - Demand under Rule 6(3) of Cenvat Credit Rules, 2004 Demand based on explanation to the definition of 'excisable goods' given under Section 2(f) of Central Excise Act, 1944- As per the explanation 'goods' include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable Assessee contended that marketability is not the only criterion for excisability and that the test of manufacture also should be answered Press-mud was not intentionally manufactured by the assessee and was generated in the course of excisable goods HELD: 'Manufacture' as defined under the Act pertains to any process leading to a 'manufactured product' - Press-mud generated was not a 'manufactured product' and hence cannot be considered to be an 'exempted excisable goods' - Explanation to the definition of excisable goods

inconsequential Rule 6(3) of Cenvat Credit Rules, 2004 not attracted - Demand not sustainable. [paras 1, 2]

5.3 Though, w.e.f. 01.03.2015, for the purposes of Rule 6 of the Credit Rules, aluminium dross is covered under "exempted goods", in terms of Explanation 1 to Rule 6(1) of the Credit Rules, they are not manufactured product as held in the judicial pronouncements discussed in Paras 5.2 & 5.2.1 above. It is also observed that there is no evidence on record which shows that the aluminium dross generated as waste and residue, were results of the manufacture. Thus, when aluminium dross is not products of any manufacturing process, I find that Rule 6(3) of the Credit Rules, is not applicable.

5.4 Further, I find that in the light of decision of the Hon'ble Supreme Court in the case of Union of India vs. M/s DSCL Sugar Ltd., CBEC vide Circular No. 1027/15/2016-CX dated 25.04.2016 issued under F.No. 96/115/2015-CX.1, rescinded their earlier Circular No. 904/24/2009-CX dated 28.10.2009.

5.4.1 In the aforesaid Circular dated 25.04.2016 of the CBEC, it has also been pointed out that in view of insertion of Explanation 1 and Explanation 2 in Sub-rule 6(1) of the Rules, with effect from 01.03.2015, non-excisable goods (waste or by-product) are 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 Rules.

5.4.2 In this regard, I observe that the similar issue has been decided by the Hon'ble High Court Allahabad in the case M/s Balrampur Chini Mills Ltd Vs Union of India wherein the Hon'ble High Court has held that Cenvat credit need not be reversed in respect of bagasse which is an agricultural waste and not a manufactured final product. The High Court quashed CBIC Circular No.1027/15/2016-CX, dated 25-4-2016 which treated bagasse as exempted product. It also observed that amendment in 2015 in the Cenvat Credit Rules, 2004 may have the effect of treating bagasse as

exempted good but cannot result in it being manufactured goods. Relevant extracts of the said judgment dated 12.04.2019 are reproduced as under:

"17. In the instant case the petitioner has challenge the show cause notice which seeks to saddle it with the liability to reverse the CENVAT Credit claimed by it, in the light of the amendment in CENVAT Credit Rules dated 01/03/2015, and further elaborated by means of **Circular dated 25/04/2016** which treats Bagasse as an exempted good for the purpose of reversal of credit of input in terms of rule 6 of the CENVAT Credit Rules 2004. We are inclined to agree with the argument of the petitioner, that relegating them to the competent authority to decide the issue after receiving the reply from the petitioner would be just an empty formality in as much as the argument of the petitioner that despite the amendment dated 01/03/2015 the CENVAT credit claimed by them cannot be reversed in as much as the bagasse not being a manufactured product is out of the purview of Rule 6 of the CENVAT Credit Rules 2004. We are also in full agreement with the argument that the competent authority deciding the claim of the petitioner consequent to the Show Cause Notice, would be bound by the departmental **Circular dated 25/04/2016** and he would not have the liberty of disagreeing with the circular issued by Central Board of Excise and Customs. In this view of the matter it would not be efficacious to relegate the petitioner before the competent authority and in light of the above we have no hesitation in holding that the writ petition in the present facts and circumstances of the case would be maintainable.

18. The main argument of the petitioner with regard to the challenge of the Circular dated 25/04/2016 is that despite the insertion of Explanation 1 with effect from 01/03/2015, the Legislature has not removed the basis on which the judgment of the Hon'ble Supreme Court dated 24/07/2015 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 good 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 good would be required.

19. Rule 6 of the CENVAT Credit Rules 2004, as it existed prior to 28.02.2015, 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 subclause (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 inventory 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 percent of the value of the exempted goods and the provider of output service shall pay an

amount equal to six percent of the value of the exempted services; or ii. "

20. The union of India amended CENVAT Credit Rules, 2004 with effect from 01/03/2015 by inserting Expression 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 good 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 good.

22. Rule 6(2) provides that where a manufacturer avails of CENVAT credit in respect of any inputs and manufacturers 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 vs 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 vs 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 (1) 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 amounting 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 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 good and final product as defined in Clause (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 25/04/2016 proceeds on the basis that Bagasse is a non-excisable good and is now to be treated like exempted good 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 vs 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 not application.

31. This amendment may have the effect of treating Bagasse to be an exempted good, but cannot result in Bagasse being manufactured good, 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 (4) and is not a non-excisable good, as mentioned in the impugned Circular.

33. That the Circular dated 25/04/2016 interpreting Explanation 1 to Rule 6 has provided that "consequently, Bagasse, dross and skimmings of nonferrous metal or any such byproduct 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 good, is clearly erroneous, and for this reason also the Circular dated 25/04/2016 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 judgement of the Hon'ble Supreme Court in the case of Union of India and others vs 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 25/04/2016, 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 24/03/2017 contained in Annexure-2, are hereby quashed.

5.4.3 The Supreme Court Bench comprising Hon'ble Mr. Justice A.M. Khanwilkar and Hon'ble Mr. Justice Ajay Rastogi, on 8-3-2019, dismissed the Petition for Special

Leave to Appeal (C) No. 29348 of 2015 with Special Leave Petition (C) No. 17091 of 2017 and Civil Appeal Nos. 17476 of 2017 filed by Union of India against the Judgment and Order, dated 8-12-2014 of Bombay High Court in Writ Petition No. 9263 of 2014 as reported in 2015 (315) E.L.T. 10 (Bom.) (Hindalco Industries Limited vs. Union of India). While dismissing the petitions, the Supreme Court passed the following order:

"In view of the decision in Union of India v. DSCL Sugar Ltd, 2015 (322) E.L.T. 769 (S.C.), nothing survives for consideration in these Special Leave Petitions and the Civil Appeal. The Special Leave Petitions and the Civil Appeal are dismissed accordingly."

The Bombay High Court in its impugned order had held that the decision of the CESTAT's Larger Bench reported in 2014 (308) E.L.T. 472 (Tri. L.B.) holding that dross and skimming of aluminium, zinc or other non-ferrous metal emerging during manufacture of aluminium/non-ferrous sheets/foils and other products and sold by assessee were manufactured goods, was perverse and vitiated by error of law apparent on the face of record inasmuch as the CESTAT had failed to take into account the binding decision of the Supreme Court reported in 2011 (273) E.L.T. 10 (S.C.) wherein it had been held that the provisions of Sections 2(d) and 2(1) of Central Excise Act, 1944 has to be satisfied conjunctively for imposition of Excise duty under Section 3 ibid. Waste and scrap are emerging as by-product during course of manufacture of other products.

The High Court had also set aside the C.B.E. & C. Circular Nos. 904/24/2009-CX., dated 28-10-2009 and 941/2/2011-CX., dated 14-2-2011 taking contrary view to the decision of the Supreme Court were also set aside.

The High Court had also held that the binding effect of a judgment of the Supreme Court, so long as it holds the field, does not lose merely because the Tribunal had on an earlier occasion had considered it in similar set of

controversy. Such judgment is a binding law as per Article 141 of Constitution of India [Union of India v. Hindalco Industries Limited - 2019 (367) E.L.T. A246 (S.C.)]

5.4.4 Though, with effect from 01.03.2015, non-excisable goods (wastes and by-products) are required to be considered as exempted goods, in terms of the said explanation-1 to Credit Rules 6, such non-excisable goods are foremost required to be manufactured products, in terms of Rule 6 of the Credit Rules, for the purpose pointing about insertion of the above explanations w.e.f. 01.03.2015, is in the of applicability of Rule 6(3) of the Credit Rules. Thus, the aforesaid CBEC's Circular context when non-excisable goods are manufactured products.

5.5 The appellant has also contested that no show cause was issued, nor any also due or sustainable. Thus, there is illegality in retaining the amount out of the order was passed to confirm any demand u/r 6(3), thus, no demand is otherwise failed to produce any contrary view against the submission of the appellant. In fact refund claim. I find force in the argument of appellant inasmuch as department no SCN or order has been found on record for recovery of any amount under rule 6(3) of the CENVAT Credit Rules, 2004 against the appellant.

5.6 In view of aforementioned facts, judgment of the Hon'ble High Court Allahabad in similar matter and judgment of the Hon'ble High Court Bombay in the case of other unit of the appellant ie M/s Hindalco Industries Ltd and also keeping in view the judicial discipline, I am of the view that since aluminium dross is waste and residue and not manufactured products, therefore, Rule 6(3) of the Credit Rules, is not applicable in this case and as such, the deduction of an amount of Rs. 1,59,44,977/- from the refund claim is not proper. Therefore, the appellant is entitled for the refund of amount of Rs.1,59,44,977/- deducted from their refund claim."

4.4 We find that the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Union of India V/s DSCL Sugar Ltd. [2015 (322) E.L.T. 769 (S.C.) which has been relied and extensively reproduced in the impugned order para 5.2. Impugned order also refers to decision of Hon'ble Allahabad High Court in case of Balrampur Chini Mills Ltd. [2019 (368) E.L.T. 276 (All.)]. Relevant excerpts of the decision have been reproduced in para 5.4.2 of the impugned order.

4.5 In case of **Hindalco Industries Limited V/s Union of India [2015 (315) E.L.T. 10(Bombay)]** the Hon'ble Bombay High Court has held as under:-

"22. That the Revenue does not wish to abide by them would not mean that the Tribunal is justified in not following them. We find that the attempt made by the Tribunal to hold that what is marketable and satisfies the requirement stipulated in the *Explanation* necessarily means that they are liable for imposition of duty under Section 3 is directly contrary to the binding Judgments of the Hon'ble Supreme Court on the same issue. The attempt of the Tribunal in para 6.5 in proceeding to analyse that the process and concluding that nobody deliberately manufactures waste, dross and scrap is in direct conflict with the findings of the Hon'ble Supreme Court. Waste and scrap emerge as a by-product in the course of manufacture of other products. The whole purpose of making these observations is to justify the conclusion that because there is a reference to these items in the Tariff Entry or the Tariff Schedule that would change the colour of the controversy. That would enable the Tribunal to then hold that the earlier Judgments and in the case of this very Assessee are no longer good law. However, we do not see how the decision in the case of *Grasim Industries Ltd.* (supra) and particularly the above reproduced paragraphs could have been brushed aside by the Tribunal. The Hon'ble Supreme Court listed the twin tests and which have to be satisfied before the goods can be

said to be excisable to tax or Central Excise duty. It is in these circumstances that the attempt of the Tribunal and which is supported before us by Mr. Sethna cannot be upheld. Each of these observations and from para 6.5 onwards run counter to the Judgments of the Hon'ble Supreme Court."

4.6 This judgement has also been upheld by the Hon'ble Supreme Court. The crux of the said judgement is that though this dross arises during the course of manufacture it is not a manufactured product because nobody deliberately manufactures waste or scrap. The logic explained by the Hon'ble Allahabad High Court in case of Balrampur Chini Mills (supra) in respect of baggase applies to the facts of the present case.

4.7 The only ground raised by the appellant revenue in their appeal is that the Hon'ble Allahabad High Court has not quashed the circular dated 25.04.2016, has not been quashed, but has been held to be not applicable, as baggase is an agricultural waste. We do not find any merits in the ground taken in the appeal. For the reason that it is the ratio decidendi of the decision which needs to be looked into and applied while considering the applicability of the decision. The observations made in the order of the High Court are to the effect that the waste arising as result of the processes undertaken cannot be considered as a manufactured product, for purpose of treating them exempted product.

4.8 Same view has been taken by the Delhi Bench in the case of Bharat Aluminium Company Ltd. [Final Order No. 54518/2024 dated 14.02.2024 in Excise Appeal No. 55013 Of 2023], observing as follows:

"8. We thus observe that the issue involved is no more res-integra. The Hon'ble Supreme Court in the case of Bajaj Auto Ltd. vs. Commissioner of Central Excise, Aurangabad reported as 2015 (322) ELT 419 (SC) has

observed that in order to make a particular product excisable to duty twin conditions are to be satisfied i.e.

- (i) The product has come into existence by process which amounts to manufacture within the meaning of Section 2(f) of CEA, 1944.*
- (ii) Such product is marketable.*

Hon'ble Apex Court relied upon its previous decision in the case titled as Union of India & Ors. Vs. Indian Aluminium Co. Ltd. & another reported as 1995 Supp(2) SCC 465/1995 (77) ELT 268 SC wherein it was held that Dross and Skimmings of Aluminium is neither goods nor a marketable commodity. To counter this decision in Aluminium Co. Ltd. (supra) that the aforesaid explanation to Section 2(d) of CEA, 1944 was incorporated but stands rescinded by the decision in Sucrose India (supra) case.

9. This Tribunal in appellant's own case has also dealt with the issue with following observations, while deciding the issue in favour of the appellant:-

"It has held that the dross and skimming of Aluminium neither goods nor marketable commodities and, hence, are not liable to Excise duty. Though Apex Court's judgment pertains to the period prior to 1986 when there was no specific entry in the Central Excise Tariff for dross and skimming of non-ferrous metal in the Central Excise Tariff and the such dross and skimming was sought to be taxed under Tariff Item 68 of the Central Excise Tariff, and during the period of dispute there was a specific Heading 2620 covering the dross and skimming of aluminium, just because a particular product is covered by a tariff entry, it would not imply that the same is excisable, as for treating the goods as excisable the same must be 'goods', that is, the same must be marketable and the Apex Court in

the abovementioned judgment, which is relied upon by the Commissioner (Appeals), has held that dross and skimming of aluminium are neither goods nor marketable. In our view this judgment of the Apex Court would be applicable to the present case also. As held by the Apex Court in the case of CCE, Patna v. Tata Iron & Steel Co. Ltd. reported in 2004 (165) E.L.T. 386 (S.C.) for treating the product as marketable, what is relevant is as to whether there is existence of market for it and the product is known to commence as marketable commodity and merely that some waste or by-product is sold, this cannot be treated as evidence of marketability. In this case, no such evidence of existence of market for aluminium dross and skimming, like prices of this item being quoted in commercial journals and newspapers, existence of persons selling this product or ecommerce websites for sale of aluminium dross and skimming, etc., has been produced. We also find Hon'ble Bombay High Court in the case of Hindalco Industries Ltd. v. CCE, Belapur, Mumbai-III (supra) has reversed the finding of the Larger Bench judgment of the Tribunal in the same case that during the period w.e.f. 10-5-2008 the aluminium dross and skimming were excisable. In view of this judgment also the finding of the Commissioner (Appeals) that the goods, in question, are not excisable cannot be assailed.

6. There is one more reason why the impugned order is correct. In terms of Chapter Note 3 to Chapter 26 of the Tariff, Heading 26.20 applies only to that ash and residue which are used in the industry for extraction of metal or as starting material for manufacture of metal compounds. Such ash and residues would, obviously, be marketable as there

would be demand for the same from metal extraction and chemical industry. But in this regard, no evidence in form of evidence of end use of the dross for extraction of aluminium or for manufacture of aluminium compound has been produced. Therefore, the dross and residues, in question, is not covered by 2620.

7. In view of the above discussion, we do not find merits in the Revenue's appeal. The same is dismissed'."

10. We observe that Rule 6 of Cenvat Credit Rules talks about the obligation of the manufacturer who deals in manufacturing of exempted as well as excisable goods. From the above discussion, it is clear that the occurrence of a by-product/waste is not an activity of manufacture, the question of applicability of Rule 6 of CCR, 2004 does not at all arise. The findings in the order under challenge since are based on applicability of said Rule 6 of CCR, 2004 and the Circular of 2016 which stands already been rescinded by the Hon'ble Apex Court, the order is not sustainable. The decision of Hon'ble Supreme Court in Sucross India (supra) has been accepted by the Department itself by their subsequent circular. We hold that applying the rescinded circular that too to fasten a wrong excise duty liability is definitely an error apparent on record the order for the said reason and in view of entire above findings is not sustainable. It is apparent from record that Supreme Court's decision in Sucrose India (supra) as well as the Circular dated 07.07.2022 were brought to the notice of Commissioner (Appeals). Ignoring the outcome thereof is held to be an act of serious judicial indiscipline. The Board be notified of such act on part of Commissioner (Appeals) with a liberty to take appropriate action if deemed fit."

5.1 We do not find any merits in this appeal filed by the Department and dismiss the same.

5.2 As the appeal itself is dismissed the stay application is also dismissed.

(Dictated & pronounced in open court)

Sd/-
(S. K. MOHANTY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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