CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No. 71165 of 2018-[Division Bench]

(Arising out of Order-in-Appeal No. MRT/EXCUS/000/APPL-MRT/120/2018-19 dated 29/05/2018 passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

Commissioner of Central Excise **.....Appellant**

(Meerut)

VERSUS

M/s Uttam Sugar Mills Ltd., **....Respondent**

(Shermau, Sharanpur)

APPEARANCE:

Shri Sandeep Kumar Singh, Deputy Commissioner, Authorised Representative for the Appellant
Shri K.K. Shrivastava, Advocate for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO-71113/2019

Date of Hearing : 24/05/2019
Date of Decision : 24/05/2019

PER: ARCHANA WADHWA

Being aggrieved with the impugned order of Commissioner (Appeals), revenue has filed the present appeal. We have heard the learned Authorised Representative Shri Sandeep Kumar Singh, Deputy Commissioner, appearing for revenue and Shri K.K. Srivastava learned Advocate appearing for the respondent.

2. A very short issue involved in the present appeal of revenue is that the Commissioner has extended the benefit to

the respondent by observing that the common inputs and input services which stand used for generation of electricity will not call for any reversal of the credit or payment of 8% or 10% of the value of the electricity.

3. For holding as above, Commissioner (Appeals) has relied upon the Tribunal's decision in the case of Bajaj Hindustan Ltd. Vs Commissioner of Central Excise & Service Tax, Meerut-I reported as 2015 (329) ELT 295 (Tri.-Del.) as also on the decision of the Hon'ble Supreme Court in the case of Union of India Vs DSCL Sugar reported as 2015 (322) ELT 769 (SC). It stands held in the said decision of the Hon'ble Supreme Court that Cenvat credit in respect of electricity was denied only on the premise that bagasse attracts excise duty and consequentially Rule 6 of the Cenvat Credit Rules is applicable. Since the action of revenue is found to be erroneous, this appeal filed by the revenue also stands dismissed.

4. We are surprised that when an issue stands finally decided by Hon'ble Apex Court, how the committee of chief Commissioners can decide to file an appeal against the said order. Even if the amendment to Rule 6 introducing an explanation thereto is taken into consideration, we find that the electricity still remains a non-excisable product. To the same effect is another decision of the Tribunal in the case of M/s Rukmani Power & Steel Ltd. Vs Commissioner of Central Excise & Service Tax, Raipur reported as 2017 (354) ELT 144 (Tri.-Del). As such, we find no infirmity in the impugned order of Commissioner (Appeals).

5. Revenue’s appeal is accordingly rejected.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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