CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70170 of 2019-Single Member

(Arising out of Order-in-Appeal No. MRT/EXCUS/000/APPL-MRT/468/2018-19 dated 17/01/2019 passed by Commissioner of Central Goods & Services Tax (Appeals), Meerut)

Commissioner of Central GST &

Central Excise, Meerut **.....Appellant**

(Opp. Ch. Charan Singh University,

Mangal Pandey Nagar, Meerut)

VERSUS

M/s Nanglamal Sugar Complex **....Respondent**

(Village-Nanglamal, P.O.-Maukhas, Garh Road, Meerut, U.P.)

APPEARANCE:

Shri Pawan Kumar Singh, Authorised Representative for the Appellant
Request for Adjournment, for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO.- 71364 / 2019

Date of Hearing : 27 June, 2019
Date of Decision : 27 June, 2019

PER: ARCHANA WADHWA

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. We have heard Shri Pawan Kumar Singh learned A.R. appearing for the Revenue. The respondents have made a request for adjournment, which request we reject as a simple issue covered by precedent decision are involved.

2. The respondents are engaged in the manufacture of sugar, molasses etc. They also had a captive power generating unit and the electricity produced therein was being utilized by them in the manufacture of their final product. A part of the electricity was being sold by them to UPPCL.

3. Revenue entertained a view that they have used common inputs and input services in the manufacture of dutiable final product as also in the generation of electricity, which is a non dutiable product, they have to follow the provisions of Rule 6(3) of the Cenvat Credit Rules by paying a particular percentage of the value of the electricity.

4. Accordingly, proceedings were initiated against them resulting in passing of an order by the Original Adjudicating Authority confirming the demand of Rs.36,97,082/- alongwith confirmation of interest and imposition of penalty of Rs.3,69,708/-.

5. On appeal against the said order Commissioner (Appeals) by following the Hon'ble Allahabad High Court decision in the case of Gularia Chinni Mills Ltd. as also the Hon'ble Supreme Court decision in the case of DSCL held in favour of the assessee. For better appreciation of Commissioner (Appeals) order the relevant paragraph are being reproduced:-

> *"5.1 The amendment carried out in the Rule 6 of CCR, with effect from 01.03.2015, clarifying that for the purpose of Rule 6, exempted goods would include non-excisable goods, is not relevant as Electrical Energy, finds entry in CETA under Chapter heading 27160000 (rate of duty not indicated), was already covered under the ambit of 'exempted goods' referred to in the said Rule 6. Accordingly, as held by Hon'ble Apex Court, Rule 6 of the CCR is not applicable in respect of electricity generated and any demand raised on the basis of Rule 6 of the CCR is therefore not sustainable.*

5.2 Moreover, CENVAT credit of capital goods, inputs/input services is admissible when the same are used for generation of electricity, provided it is captively used within the factory. In the breach of the condition of such use, action could have been initiated for the denial of the Cenvat credit taken to the extent the electricity so generated was not used in the factory of the appellant. The demand raised by applying Rule 6 of the CCR is, therefore, not sustainable."

6. Revenue in their memo of appeal have not advanced any reasons for non applicability of the said decision of the Hon'ble Allahabad High Court. When the issue stands decided by the jurisdictional High Court as well as the Hon'ble Apex Court, we find no reasons to take a view different than the one taken by Commissioner (Appeals). Accordingly, Revenue's appeal is rejected.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks