CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70248 of 2019-Division Bench

(Arising out of Order-in-Appeal No. MRT/EXCUS/000/APPL-MRT/423/2018-19 dated 17/12/2018 passed by Commissioner (Appeals) Central Goods & Services Tax, Meerut)

Commissioner of Central Goods &

Service Tax, Meerut **.....Appellant**

(Meerut)

VERSUS

M/s Rana Sugars Ltd. (Unit-III) **....Respondent**

(Karimganj, Shahabad, Distt.-Rampur U.P.-244922)

APPEARANCE:

Shri Pawan Kumar Singh, Authorised Representative for the Appellant
Ms. Tripti Gupta, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. - 71621 / 2019

Date of Hearing : 21 August, 2019
Date of Decision : 21 August, 2019

PER: ARCHANA WADHWA

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal.

2. As per facts on record, the respondents were engaged in the manufacture of sugar and were availing benefit of Cenvat credit of duty paid on various inputs. They were issued a show cause notice dated 20/03/2017 demanding amount payable in terms of Rule 6(3)(i) of the Cenvat Credit Rules, 2004 in respect

of clearances/sale of Bagasse, Press Mud and Electricity for the period March, 2015 to June, 2016 on the ground that common Cenvatable inputs have been used in the manufacture of sugar and the said products. Reliance was placed on amendment of Rules with effect from 01/03/2015 vide which explanation 1 & 2 were introduced to the effect that non-excisable goods/not manufactured/produced goods would be considered as exempted goods. The said demand was confirmed by the Original Adjudicating Authority.

3. On appeal Commissioner (Appeals) set aside the order of the Lower Authorities by observe as under:-

> *"6.1. I find that the issue regarding non-applicability of Rule 6 of CCR in respect of electricity generated by sugar mills has been settled by Hon'ble High Court of Allahabad, in the case of M/s Gularia Chinni Mills Ltd. vs. UOI, as reported in 2014 (34) STR 175, which was upheld by the Hon'ble Apex Court, as reported in 2015 (322) ELT 769. The inference drawn by the adjudicating authority that the case law of DSCL Sugars was not applicable after the insertion of Explanation 1 to Rule 6 of the CCR is misconceived. I find that as per the judgement of the Apex Court Bagasse being agricultural waste, cannot be said to be manufactured & accordingly, provisions of Rule 6 of the CCR are not applicable. Besides, there is nothing to infer that any Cenvatable input is used in the generation of Bagasse and Electricity, as all/entire quantities of the inputs/input service on which Cenvat credit is taken are used for manufacture of sugar. The adjudicating authority has failed to point out what part of the inputs or inputs services were not used in the manufacture of the dutiable goods i.e. sugar/molasses. The amendment carried out in the Rule 6, of the CCR, with effect from 01.03.2015, clarifying that for the purpose of Rule 6, exempted goods would include non-excisable goods and the CBEC Circular*

No.1027/15/2016-CX dated 25.04.2016, issued in this regard, is not relevant as Bagasse and Electricity, being excisable goods, and chargeable to NIL/no rate of duty (Chapter heading No.23032000 and 27160000 of Central Excise Tariff Act, 1985 respectively), were already covered under the ambit of 'exempted goods' referred to in the said Rule 6. The adjudicating authority has, therefore, misconstrued the amendment in the said Rule 6. However, this does not alter the fact that there is no manufacture involved in the emergence of Bagasse. Accordingly, as held by Hon'ble Apex Court, Rule 6 of the CCR is not applicable in respect of bagasse and electricity generated and any demand raised on the basis of Rule 6 of the CCR is therefore not sustainable."

The said order of Commissioner (Appeals) is impugned before us.

4. This Bench of the Tribunal has dealt with an identical issue in the case of Bajaj Hindusthan Sugar Ltd. vide Final Order No.70916/2019 dated 01/05/2019 as also vide Final Order No.72832/2018 dated 10/12/2018 Revenue's appeal was rejected by observing as under:-

"6. The short issue required to be decided is as to whether the explanations entered in Rule 6(3) w.e.f. 01st March, 2015 would have the effect of the assessee being under a legal obligation to pay duty on the non-excisable goods bagasse and press mud. We note that the explanations were considered by the Tribunal in the case of M/s Simbhaoli Sugar Ltd. v. Commissioner of Central Excise, Noida vide final Order No.71567/2018 dated 19.07.218. 7. It was observed that inasmuch as according to Supreme Court's decision in the case of Union of India v. DSCL Sugar Ltd. referred (supra), bagasse has been held to be an agricultural waste or residue, there could be no manufacturing activity. The press mud has also been held

to be a waste and not a manufactured product. As such the amendment made in the provisions of Rule 6 would not have any effect to the facts and circumstances of the present case".

5. Inasmuch as the issue stands decided in the above referred decisions, by following the same, we reject the appeal filed by the Revenue.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks