CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70397 of 2018-Division Bench

(Arising out of Order-in-Original No. LKO/EXCUS/000/COM/EX/060/2017-18 dated 21/02/2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Lucknow)

M/s Kumbhi Chini Mills **.....Appellant**

(District – Lakhimpur Kheri-262804)

VERSUS

The Commissioner Central GST &

Central Excise, Lucknow **....Respondent**

(Lucknow)

WITH

Excise Appeal No.70398 of 2018-Division Bench

(Arising out of Order-in-Original No. LKO/EXCUS/000/COM/EX/061/2017-18 dated 21/02/2018 passed by Commissioner of Central Goods & Service Tax and Central Excise, Lucknow)

M/s Gularia Chini Mills **.....Appellant**

(District – Lakhimpur Kheri-262901)

VERSUS

The Commissioner Central GST &

Central Excise, Lucknow **....Respondent**

(Lucknow)

APPEARANCE:

Shri Rahul Agarwal, Advocate for the Appellant
Shri Sandeep Kumar Singh, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NOS. - 71616-71617 / 2019

DATE OF HEARING : 19 July, 2019
DATE OF DECISION : 19 July, 2019

PER: ANIL G. SHAKKARWAR

Above stated two appeals are taken together for decision since issue involved in both the appeals is same however the appellants are different.

2. The brief common facts involved in both the cases are that the appellants are engaged in the manufacture of Cane Sugar. In the process of manufacture of 'Cane Sugar' Bagasse and Press Mud emerge. The said Bagasse is further used for generation of electricity in the captive electricity generation plant. Part of the electricity generated is used within the factory of manufacture and part of the electricity generated which is in the excess of requirement of the manufacturing unit is sold to State Electricity Board. Revenue collected information from the appellants about the amount equivalent of the electricity sold by the appellants during the period from March, 2015 to March, 2016. In terms of sub-rule (3) of Rule 6 Cenvat Credit Rules, 2004 it appeared to Revenue that the appellants should pay amounts equal 6% of the values of electricity sold by the appellants to Electricity Board. Therefore through show cause notice dated 01/04/2017 M/s Kumbhi Chini Mills were called upon to show cause as to why an amount of around Rs.2.63 crores should not be recovered from them in terms of the provisions of said sub-rule (3). It was also contended in the show cause notice that Central Board of Excise and Customs vide Circular No.1027/15/2016-CX dated 25/04/2016 arrived at conclusion that Bagasse which is non-excisable if cleared for consideration from the factory needs to be treated like exempted goods for the purpose of reversal of Cenvat credit of input and input services in terms of Rule 6 of Cenvat Credit Rules, 2004. On the basis of said Circular in respect of M/s Gularia Chini Mills Revenue issued a show cause notice dated 01/04/2017 for demand of approximately Rs.2.09 crores under said sub-rule (3) of Rule 6 of Cenvat Credit Rules,

2004. On contest both the show cause notices were adjudicated through independent Orders-in-Original which are impugned before this Tribunal.

3. We have heard Shri Rahul Agarwal learned advocate on behalf of both the appellants. He has submitted that said issue was considered by the Hon'ble Allahabad High Court in MISC. BENCH No.9854 of 2017 in the case of M/s Balrampur Chini Mills Ltd. vs. Union of India and Hon'ble Allahabad High Court through decision dated 12/04/2019 held as follows:-

> "34. In the light of the above, we are of the considered opinion that in the 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 & others vs. M/s DSCL Sugar Ltd. & 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 Cenvat Credit Rules, 2004 as well as the impugned show cause notice dated 24/03/2017 contained in Annexure-2, are hereby quashed."

The said judgment of the Hon'ble Supreme Court in the case of Union of India & Others vs. M/s DSCL Sugar Ltd. & Others is reported as 2015 (322) E.L.T. 769 (S.C.).

4. Learned A.R. appearing for the Revenue has supported the impugned orders.

5. Having considered the submission from both the sides and on perusal of record, we note that the basis for issue of both the show cause notices in the appeals under consideration is Circular No.1027/15/2016-CX dated 25/04/2016 issued by Central Board of Excise and Customs. Since the same has been quashed by the Hon'ble Allahabad High Court both the show cause notices became unsustainable. As a result the impugned orders are unsustainable. In view of the said findings, we set aside the impugned orders and allow both the appeals.

(Dictated and pronounced in open court)

Sd/-
(JUSTICE DILIP GUPTA)
PRESIDENT

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

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