CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 17/5/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/ 70210/2016 SM** dated 27/11/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/55783/2014 SM	CCE, LUCKNOW 7-A, ASHOK MARG LUCKNOW

Name and Address of Respondent	D.S.C.L.SUGAR HARIYAWAN, HARDOI UP

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH KAPIL VAISH.CA
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4 Bar Association, CESTAT, ALLAHABAD
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi -- 110070
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Asstt. Registrar
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Ex. Appeal No.55783/14

Arising out of OIA No.112-CE/APPL/LKO/2014 dated 25.08.2014 passed by Commr. (Appeals) of Central Excise, Customs & S.Tax, Lucknow.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether His Lordship wishes to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental Authorities? :

Commissioner of Central Excise & S.Tax, Lucknow

..APPELLANT(S)

VERSUS

M/s D. S. C. L. Sugar

RESPONDENT (S)

APPEARANCE

Shri V. K. Shastri, A.C. (A.R.) for the Department
Shri Kapil Vaish, C. A. for the Respondent (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 27.11.2015

Final ORDER NO. 70210/2016

Per Mr. Anil Choudhary :

The Revenue is in Appeal against Order-in-Appeal No. 112-CE/APPL/LKO/2014 dated 25.08.2014 passed by Commr. (Appeals) of Central Excise, Customs & S.Tax, Lucknow.

2. The facts in brief are that the appellant is a manufacturer of excisable goods namely sugar and molasses from Sugar Cane. They also have a cogeneration plant to manufacture electricity for captive consumption for manufacture of excisable products. However surplus electricity was sold to the Uttar Pradesh Power Corporation Ltd. (U.P.P.C.L.). A show cause notice dated 23.04.2012, was issued as it appeared to revenue that the assessee is using common inputs on account of which Cenvat credit had been availed in the manufacture of dutiable as well as exempted final products (bagasse & electricity) which are used by them prior to production/manufacture of which is consumed by the assessee himself to produce electricity. The assessee have sold the exempted final product that is, electricity to UPPCL and thus, it is marketable commodity. As the assessee have used Cenvatable inputs like Lubricants and other chemicals being in-don, Hydrochloric Acid and Caustic soda flakes, et cetera in the manufacture of bagasse which in turn produces electricity. The assessee is not maintaining any daily stock account for the exempted final product electricity as well as they do not maintain separate accounts of common Cenvatable inputs used in manufacture of dutiable products (sugar and molasses) as well as exempted final product – electricity As provided in Rule 6 (2) and as per the amended

Rule 6(3A) with effect from 01/04/2008, it was found that the assessee is required to pay an amount equal to 5% for the total price of exempted final products/goods which has been cleared by the manufacturer at the time of clearance from their factory in terms of Rule 6 (3A) (b) and as per amended Rule 6 (3) (i) of Cenvat credit Rules, 2004. The value of the electricity sold during the period April, 2011 to December, 2011, valued at Rs.5,17,48,616/- without payment of an amount equal to 5% of value of electricity sold or cleared. The Revenue felt that the appellant have contravened the provisions of Rule 6 (3) of CCR and according an amount @ 5% of the value of the power sold, as Rs.25,87,431/-, was recoverable under Rule 14 of Cenvat Credit Rules, 2004 with interest and the amount already reversed Rs.2,41,356/- be not appropriated.

3. The assessee-Respondent contested the show cause notice. In reply, it is stated that they have cleared the electricity to UPPCL, which provides for sale of surplus electricity at specified rate. It also provided for banking of power and they are eligible to obtain the banked power from UPPCL whenever it is required. Under the Cenvat credit Rules, they are eligible to avail Cenvat credit on the inputs/input services and capital goods used in manufacture of taxable final products. So far the ground in the show cause notice that they had engaged in manufacture of excisable final products of dutiable category and non-excisable final product of exempted category, being ~~by~~ bagasse and the electricity, it was contended that electricity is classified under CET head 27/60000 and there is no corresponding rate mentioned in the tariff and thus, it cannot be said that the rate of duty is nil, and

therefore electricity is exempted goods. It was further contended that under such circumstances, Rule 6 is not attracted. It was further contended that under the provisions of Rule 6(3A) they opted to pay or reve~~nue~~rse proportionate Cenvat credit utilized in clearance of exempted goods being electricity. Accordingly, they prayed for dropping of the show cause notice. Vide O-I-O dated 01/01/13, the show cause was adjudicated and the proposed demand was dropped taking notice of the ruling of Honourable Supreme Court in the case of Maruti Suzuki wherein it was held that where an assessee being manufacturer of excisable goods, clears excess electricity outside the factory, the Cenvat credit shall not be admissible on such electricity cleared for consumption outside the factory. It was further also contended the assessee have reversed the proportionate Cenvat credit in terms of the law, as clarified by Honourable Supreme Court and according to the formula given in Rule 6(3A) of the Cenvat Credit Rules. It was further stated that the respondent filed declaration on 01/04/11 under Rule 6(3A). Further, it was stated that the assessee had taken credit of Rs.2,96,917/- on inputs during the period April, 2011 to December, 2011 and they informed the revenue vide letter dated 01/01/12, they have reversed the proportionate amount of Rs. 2,41,358/- on account of electricity cleared. It is further stated in the intimation letter dated 01/01/12, they have correctly computed and reversed the amount of Cenvat credit on inputs/input services. However, in case of any discrepancy found they may be informed for rectifying the same. Vide O-I-O, it was also taken notice of, that the Commissioner (Appeals) in assessee's own case vide appeal order number 62/CE/LKO/2012 dated

13/02/12, had allowed the appeal after observing that the assessee had reversed the proportionate Cenvat credit attributable to sale of electricity to UPPCL. It was further held that once the assessee has exercised option under Rule 6(3A) as available to them, they cannot be forced to pay an amount as per Rule 6(3A)(i). It was further held, although rule 6(3A) requires to follow payment on monthly basis and finally adjustment made for the whole year, but in view of the provision for payment of interest under rule 6(3A) (i), no adverse inference is drawn. Accordingly, it was held that as the assessee opted for payment as per rule 6(3A) of Cenvat Credit Rules, they were required to pay the dues for the whole financial year, along with interest, applicable in terms of the said Rules. Accordingly, the proposed demand of Rs.25,87,431/- was dropped with a direction to reverse the Cenvat credit availed with interest as applicable in terms of rule 6(3A) of CCR as opted by the assessee and the amount already reversed Rs.2,41,356/- was ordered to be appropriated.

4. Being aggrieved, the Revenue preferred appeal before the Commissioner (Appeals) on the ground that the adjudicating authority have erred in accepting proportionate reversal relying on the ruling of Apex Court in the case of Maruti Suzuki Ltd, which is not proper as the Apex Court has not given any mechanism for segregation of credit and it was further urged that the assessee have not followed the correct procedure Rule 6(3A) and therefore, the dropping of the proposed demand was not legal and proper. The ld. Commissioner (Appeals) dismissed the Revenue's appeal observing that in the case of Maruti

Suzuki, the Honourable Supreme Court although have not given any Formula for reversal, but at the same time, it is not disputed that the assessee had opted for proportionate reversal and have also made reversal, as well as the rest of the things is procedural and accordingly upheld the Order-in-Original. Being aggrieved, the Revenue is before this Tribunal in appeal on the similar ground which was before the Commissioner (Appeals).

5. Heard the parties & the ld. AR for revenue, who have reiterated the grounds of appeal.

6. The ld. Counsel for the Respondent Assessee have relied on the findings of the Lower Courts and reiterated the same. He further relies on the ruling of Honourable Supreme Court in the case of union of India Vs. DSCL Sugar Limited and others order dated 24.07.15. 2015 (322) ELT 769 (SC) wherein a batch of Appeals before the Apex Court it was held that bagasse being only an agriculture waste and residue, and not being result of any manufacturing process, is not covered in the definition of 'manufacture' under Section 2 (f) of Central Excise Act,1944 and further, there is no Chapter Note or Section Note in CET declaring process in respect of bagasse as amounting to manufacture, notwithstanding amendment in 2008 in section 2 (d) ibid, creating a fiction of deemed marketability, bagasse and press mud are not excisable as it is not passing test of manufacture. Further, it was held that emergence of ~~resultant and~~ waste and residue of agriculture produce e.g. bagasse does not amount to manufacture, being itself not

result of any process, hence not excisable. The ld. Counsel further stated that there being no ~~meant setting~~ manufacturing process in the generation of bagasse, under Rule 6 of CCR 2004 was ~~had~~ held not applicable. It was further held that denial of credit on electricity on the premises of bagasse being excisable, was not sustainable under the provisions of Rule 6. The Apex Court held as follows :

> "13. Cenvat Credit in respect of electricity was denied only on the premises that bagasse attracts excise duty and consequently Rule 6 of the Cenvat Credit Rule is applicable. Since, this action of the appellant (Revenue) is found to be erroneous, all these appeals of the Revenue also stand dismissed."

7. Having considered the rival contentions. I find that that there is no error in the impugned order. The Apex Court have already clarified and held that Rule 6 is not attracted in clearance of bagasse and press mud being agriculture waste and not manufactured goods within the meaning of Section 2 (f) of Central Excise Act. Further, I find that the Apex Court in the case of Maruti Suzuki Ltd. (supra), have held that no reversal of Cenvat credit is required in generation of electricity consumed for in-house production of excisable goods. Only on being cleared, the assessee is required to reverse the Cenvat credit in proportion. In view of the finding of the Courts below that the assessee had reversed the proportionate credit attributable to the electricity ~~is~~ sold out, I find no error in the impugned order. In this view of the matter, the appeal filed by the Revenue is dismissed. The

appellant assessee will be entitled to consequential benefit, if any, in accordance with law.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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