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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 06/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71304/2017-SM[BR] dated 16/02/2017

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
1	E/1823/2009	**DHAMPUR SUGAR MILLS LTD.** DHAMPUR, DISTT. BIJNOR (U.P.)
		Name and Address of Respondent
2		-C.C.E. MEERUT II (Now Hapur) Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Copy To
3Advocate(s) / Consultant(s):

BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE (ADJ. INCOME TAX OFFICE), STANLEY ROAD, CIVIL LINES, ALLAHABAD (U.P.)-211001

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, Opp ICICI Bank of Defence Colony 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/1823/2009-EX[SM]

(Arising out of Order-in-Appeal No. 299-300-CE/MRT-II/2008 dated 30/12/2008 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

Dhampur Sugar Mills Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II (now Hapur) **Respondent**

Appearance:

Shri Bipin Garg (Advocate) for Appellant
Shri P.K. Singh, Supdt. (AR) for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 16/02/2017
Date of Decision : 16/02/2017

FINAL ORDER NO-71304/2017........

Per: Anil Choudhary

The issue in this appeal by the appellant a manufacturer of sugar and molasses and also Acetaldehyde, Acetic Acid, Acetic Anhydride, Ethyl Acetate, Rectified Spirit (Ethyl Alcohol), some of the final products are dutiable and some are not dutiable. There are two major demand involved in the matter, first one relates to reversal of credit of duty taken on molasses, used in manufacture of Rectified Spirit and this amount is Rs. 25,48,951/- and the second issue is demand of Rs. 20,29,755/- which have been confirmed on the ground that molasses were transferred to another company without the permission of the Department. Further, penalty have been imposed on the appellant under Section 11 AC read with Rule 15 of CCR.

2. The brief facts as per the show cause notice are that there was an inspection in the unit DSM chemical owned by DSM Ltd on 10 November, 2005, verification of stock of some finished goods as well as raw material was done, and the following discrepancy/variation was found: -

Name of the Commodity	Qty. found in stock in kg./litres	Qty. as per RG-1 Register	Days production as per production slip	Total stock as per their records	Diff. In Qty.
Acetic Acid	58755.167	58490	0	58490	(+) 265.167 (say 265)
Acetic Anhydride	14936.067	14035	831	14866	(+) 70.067 (say 70)
Acetaldehyde	68094	65155	0	65155	(+) 2939

3. Statement of Mr. Chandra Prakash Singh the General Manager of the unit was taken under Section 14 of the Act, wherein he stated that in respect of Acetic Acid and Acetic Anhydride, the difference was mainly due to temperature variance at the time of stock taking. In respect of Acetaldehyde he accepted that 2939 kgs was excess in stock. However, no reason had been given by him for such excess stock. Such excess stock as aforementioned, was valued at

Rs. 95,046/- involving duty of Rs. 15,512/- and the same was seized.

4. Further stock taking of finished goods as well as some raw materials were also conducted on 10.11.2005, wherein variation was found as follows: –

S. No.	Name of the goods	Variance in stock	Remarks	Actual variation	Value of goods	Duty involved BED + Ed. Cess
1	Ethyl Acetate	(+) 1165	1165 kg was in excess of RG1. However, as per production report for the day upto 1400 hrs 1600 kg had been produced. Taking this fact into account the difference comes to shortage of 435 kg.	(-) 435 kg	15225	2436 + 49
5	SDS	(-)3343.460 ltr	Out of this Qty. of 1200 Ltr was consumed in manufacture of 1600 kg of Ethyl Acetate	(-) 2143.460 ltr	40190	6430 + 129
6	Oxalic Acid	(-) 450 kg	No justification given by the party	(-) 450 kg	10350	1650 + 33
7	R.S.*	(-) 119 kg	As per party seems to be due to temp. diff. no evidence provided by the party	(-) 119 kg	-	457 + 9

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8	Absolute Alcohol*	(-) 279 kg	No justification given by the party	(-) 279 kg	-	1077 + 21
9	Absolute Alcohol (Denatured)*	(-) 156 kg	No justification given by the party	(-)156 kg	-	599 + 11
10	PTSA	(-) 30 kg	No justification given by the party	(-) 30 kg	1140	182 + 4
	TOTAL					Rs. 12,831 + Rs. 256 i.e **Rs. 13,087**

5. The products 'rectified spirit' or RS, Absolute alcohol and 'Absolute alcohol – denatured' were fully exempted. But these goods have been manufactured by the appellants from molasses on which they had taken Cenvat Credit. The amount of duty shown against these items is in fact Cenvat Credit involved on molasses which had been used in manufacture of said quantities of the goods. It appeared to Revenue that in respect of some goods, as mentioned above, shortage in the stock had been found at the time of stock taking and no proper justification was offered for the same. The duty payable on such shortage amounted to Rs. 12,831/- + Rs. 256/-. The appellant did not dispute the allegation of shortage and debited the duty in RG 23A Part II with Entry

No. 1361 dated 10 November, 2005.

6. It further appeared that the appellant was engaged in manufacture of exempted goods namely Rectified Spirit, Tariff heading 2204, which is chargeable to NIL rate of duty. Such Rectified Spirit had been used captively by appellant in manufacture of some dutiable finished goods and some quantities had been cleared/sold to various customers at NIL rate of duty (as tariff rate on Rectified Spirit being nil). As such it appeared that the appellant was liable to pay under the Provisions of Rule 6(3)(a)(i) of CCR the proportionate amount attributable to the credit involved on the inputs/input services (molasses) used in the manufacture of Rectified Spirit cleared or sold at nil rate of duty. It further appeared that major part of the Rectified Spirit is used in manufacture of dutiable goods while a small part is cleared or sold at nil rate of duty. It further appeared that the appellant have procured molasses from various sugar units. The molasses were being stored in five tanks in the unit and Cenvat Credit was availed on the entire quantity of molasses received/procured. Cenvat Credit so availed being utilized by the appellant towards payment of duty on the clearance of finished goods or towards payment under Rule 6(3)(a)(i) of CCR, 2004. It further appeared that appellant while preparing the summary for the month of March 2005 of the RG 23 Pt. I register purposely bifurcated the said quantity of molasses in two parts, that is molasses used for Potable Alcohol and

molasses used for Captive Alcohol. It appeared that molasses used for Potable Alcohol means molasses being used in the manufacture of 'Rectified Spirit' which can either be used captively in the plant or for manufacture of dutiable goods or for sale to various customers. On the other hand, molasses used for Captive Alcohol means that the molasses exclusively used for captive consumption in the plant for manufacture of all dutiable goods. Further, on scrutiny of RG 23A Part I register, revealed that appellant had under the heading (Molasses used for Potable Alcohol) had not shown any fresh receipt of molasses. However, all fresh receipts of molasses have been shown against "Molasses used for Captive Alcohol". It further appeared that appellant have bifurcated the inventories of molasses in said two parts with intent to indicate that the Rectified Spirit which had been cleared/sold by them at nil rate of duty was manufactured from the molasses on which duty had been paid at lower rate i.e., @ Rs. 500/- per MT or at nil rate of duty (in respect of molasses received from M/s DSM Kashipur) in order to pay less amount under Rule 6(3)(a)(i) of CCR, 2004. It is relevant to mention that prior to 28 February, 2005 the duty rate applicable on molasses was @ Rs. 500/- per MT and with effect from 01 March, 2005 the rate was increased Rs. 1000/- PMT and again with effect from 06 May, 2005 it was modified to Rs. 750/- PMT. Appellant was also procuring molasses from M/s DSM Kashipur which had been availing area based exemption under Notification Nos. 49 and 50/2003-CE. It further appeared that appellant had shown molasses which have been procured up to 28 February, 2005, at their dealers Rs. 500/- PMT has been consumed by them up to the month of August 2005. On the other hand the molasses on which increased duty i.e. @ Rs. 1000/- PMT had been paid and being received and consumed by them simultaneously. It was also noticed that appellant had no separate storage tank for the above mentioned two types of molasses. Thus, it appeared that on the basis of notional bifurcation of stock of molasses appellant had paid reversed the amount of Cenvat Credit @ Rs. 500/- PMT under Rule 6(3)(a)(i) of CCR, 2004 on molasses used in the manufacture of rectified spirit cleared/sold at nil rate of duty till 02 June, 2005. It further appeared that appellant have not paid any amount from 03 June, 2005 under Rule 6(3)(a)(i) of CCR, 2004 on the quantity of molasses used in relation to the manufacture of rectified spirit, which have been cleared or sold by them at nil rate of duty. On scrutiny of documents further reveals that appellant have received molasses from DSM, Kashipur, wherein no duty was being paid on such molasses. In order to show separate inventory appellant had maintained receipt and consumption of the said molasses in RG 23A Part-1 Register (page no. 1 to 18 of RUD-3) separately. It have been shown therein that with effect from 03 June, 2005 only the said exempted molasses have been used by them in manufacture of rectified spirit sold at nil rate of duty. It appeared to Revenue that since appellant was not utilising said exempted molasses exclusively for the manufactured of rectified spirit, which have been sold or cleared by them at nil rate of duty, it appeared that they were doing the same. In order to avoid payment under Rule 6(3)(a)(i) of CCR, 2004. it also appeared that: –

(i) Appellant were not manufacturing rectified spirit kept separately for clearing at nil rate of duty,

(ii) Appellant were not storing rectified spirit cleared at nil rate of duty separately.

(iii) Appellant could not store molasses of above two categories separately.

7. It further appeared that the main purpose of the appellant by bifurcating the RG 23 A Part-1 Register 1, in parts for molasses received from DSM, Kashipur or and the other part for molasses received from the other factories listed above, was to show separate storage of exempted molasses in order to claim that the exempted rectified spirit, which had been cleared from the factory had been manufactured out of the above mentioned exempted molasses. It appeared that they have done so in order to avoid any payment on the sale of rectified spirit at nil rate of duty under Rule 6(3)(a)(i) of CCR, 2004. It also appeared that another purpose for the same was to pay less amount under Rule 6(3)(a)(i) of CCR, 2004, as duty on molasses was Rs. 500/- per MT till 28 February, 2005, which was subsequently increased then

again decreased.

8. It appeared that out of the five storage tank for molasses which are connected by pipes, it was noticed that, at the time of visit, no storage tank had been marked as molasses storage tank for exempted molasses received from DSM Kashipur. It was noticed that all types of molasses whether dutiable or exempt were being stored collectively in these tanks, and no separate storage was being maintained by them in respect of the exempted molasses. It appeared that appellant had maintained several RG 23 A Part-1 register in order to manipulate the separate receipt and disposal of molasses received from exempted unit – DSM Kashipur and/or from other sugar units, wherein molasses taxable. Since the appellant was not physically maintaining separate storage of these two varieties of the molasses, so the separate account by maintaining separate registers for the two variety of molasses appeared to be without any permission in order to show that the rectified spirit sold as such at nil rate of duty had been manufactured by them from exempted molasses. Further rectified spirit is manufactured in a continuous process and it is not possible that the rectified spirit cleared at nil rate of duty had been manufactured by them separately and also such spirit is being stored separately. Moreover, as the plant of the appellant is a continuous plant and rectified spirit and other goods had been manufactured therein simultaneously. In his statement dated 10 November, 2005

Acr

Shri C.P. Singh GM Commercial of appellant in response to query whether they produced rectified spirit separately, that is one for sale, another for captive consumption, he stated that rectified spirit was produced and stored commonly. It further appeared that appellant was required to pay the amount attributable to Cenvat Credit involved on the quantity of molasses used in manufacture of rectified spirit sold as such at nil rate of duty under Rule 6(3)(a)(i) of CCR, 2004 for the said purpose of quantification of involvement of Cenvat Credit on the quantity of rectified spirit sold at nil rate of duty from time to time. It appeared to Revenue that the justified method was FIFO (First In First Out) was required to be adopted. The receipt and consumption of molasses was worked out as follows:-

(a) Receipt of Molasses and rate of duty applicable

S.No.	Rate of applicable	Qty. in Qtls.	Month/date
1.	@ 500 PMT i.e. Rs. 50/- per quintal	**298503.87**	(C.B. on 28.02.2005)
2.	@ 1000 PMT i.e. Rs. 50/- per quintal	165913 75232.90 11188.30	(March'05) (April'05) (upto 07.05.05)
		252334.20	TOTAL

(b) Consumption of Molasses so procured.

(i) Related to Molasses procured @ Rs. 500/- PMT i.e. 298503.87 qtls.

S.No.	Month/date	Consumption	Closing Balance

1.	Upto 28.02.05	4447.40 (Transferred/Diverted to M/s DSSL)*	294056.47
2.	March'05	21517.10 (Transferred/Diverted to M/s DSSL)*	272539.37
		136638 (Consumption)	135901.37
3.	April'05	61891.88 (Consumption)	74009.49
4.	01.05.05 to 17.05.05	73125 (Consumption)	884.49

*The quantities, shown above as 4447.40 qtls. And 21517.10 qtls as transferred to M/s DSSL (M/s Dhampur Speciality Sugar Ltd) in the months of Jan'05 to March'05 have been actually the quantities of molasses diverted by M/s DSMC to M/s DSSL, without any reversal of Cenvat Credit.

9. Further on the FIFO method the amount of Cenvat Credit reversed under Rule 6(3)(a)(i) of the CCR, 2004 is as follows: --

Date/ Month	Sale of R.S in B.L.*	**Recovery in B/L i.e. qnty. Of R.S manufactured from one quintal of molasses	Molasses contained in said R.S. in qtls i.e. col. 2 / col. 3	Reversal rate Rs./ qtls	Cenvat required to be reversed	Ed.Cess required to be reversed	Cenvat reversed	Ed.Cess reversed
1	2	3	4	5	6	7	8	9
20.05.05 to 31.05.05	220000	21.78	10101.01	100	1010101	20202	505037	10100
June'05	412000	22.05	18684.80	100	1868480	37370	672500	13450
July'05 (Total sales were made upto 09	136000	21.17	6424.19	100	642419	12848	0	0

July'05)								
Oct'05	48000	23.15	2073.60	75	155508	3110	0	0
					3676508	73530	1177537	23550

The figure of sale of rectified spirit have been taken from RG-1 registers for the period 2005-06 as per Annexure-B to the Panchnama and recovery percentage have been taken on the basis of Form No. 28 from the file of loose papers at Sr. No. 31 Annexure-B to the Panchnama.

10. Accordingly, it appeared that appellant was required to reverse Cenvat Credit Rs. 36,76,508/- + Cess Rs. 73,530/- while they have reversed only Rs. 11,77,537/- + Cess Rs. 23,550/-. It therefore appeared that there is a short reversal of an amount of Rs. 24,98,971/- + Cess Rs. 49,980/- totaling Rs. 25,48,951/-. As the appellant have deposited Rs. 20,27,790/- in the course of investigation, there was still required to reverse or pay an amount of Rs. 5,21,161/- under Rule 6(3)(a)(i) of CCR, 2004.

11. On scrutiny of document resumed from appellant revealed that between the period 24 January, 2005 to 10 March, 2005, they had diverted 25,964.50 Qtls. of raw material – molasses to another manufacturing unit M/s Dhampur Specialty Sugar Ltd (DSSL), which itself has been engaged in the manufacture of sugar related products by using sugar and molasses and other raw materials. It was also noticed that appellant had also availed Cenvat Credit on

the said molasses which was diverted by them to DSSL and the said transfer was done by appellant without reversal of credit. As per Rule 3 and 4 of CCR, 2004 appellant was required to reverse the amount of Cenvat Credit involved on the said 25,964.50 Qtls. of molasses. The total Cenvat Credit involved was worked out at Rs. 20,29,755/- as per the register which was resumed at Sr. No. 25 of Annexure B to the Panchnama. The said register have been named as 'Invertose Sheera'. It also appeared that the old name of M/s DSSL was M/s Dhampur Invertose Ltd and so the said Invertose Sheera appeared to be the molasses pertaining to M/s DSSL. Statement of one of Shri Avdhesh Kumar, Assistant Manager (Commercial) of appellant was recorded from which it appeared that appellant had diverted 25964.50 Qtls. of molasses to M/s DSSL without following proper procedure and availed the Cenvat Credit of Rs. 20,29,755/- towards payment of duty on other goods manufactured and cleared by them. Such diverted quantity of molasses to M/s DSSL was not shown in their RG 23 A Part-I registers and no document had been issued for the said clearances. From the explanation given, it appeared that they have never obtained any permission from the Central Excise Department for such storage of raw material in another unit. Further as per register (RUD-5) 26,188.60 Qtls. of molasses had been shown as received by appellant from M/s DSSL, but without any proper documents between 19. July, 2005 to 12 August, 2005 (only details of such receipts have been provided from page no. 17 to 43 of said RUD-5). In absence of proper documents Cenvat Credit on the said quantity of molasses appear not admissible at the time of receipt during 19 July, 2005 to 12 August, 2005.

12. The appellant was required to show cause as to why the seized goods valued at Rs. 95,046/- should not be confiscated under Rule 25 of CER, 2002 and penalty to be imposed. Further, duty of Rs. 13,087/- involved on the inputs and finished goods found short was proposed to be demanded and recovered and also with proposal to appropriate from the amount of deposit already made with further proposal to impose penalty, further Cenvat Credit of Rs. 25,48,951/- involved on the molasses used in manufacture of rectified spirit cleared as such at nil rate of duty was proposed to be recovered under Rule 14 of CCR read with Section 11 A of the Act as the appellant had not paid the said amount under Rule 6(3)(a)(i) of CCR, 2004 with further proposal to appropriate the amount already paid Rs. 20,27,790/- with further proposal to impose penalty, further the amount of Rs. 20,29,755/- involved on the molasses transferred to M/s DSSL was proposed to be recovered under Rule 4 of CCR, 2004 read with Section 11 A of the Act with further proposal to impose penalty.

13. The SCN was adjudicated vide Order-in-Original dated 14 February, 2008, whereby order of confiscation was passed

as regards the excess quantity of Acetic Acid, Acetic Anhydride and Acetaldehyde under Rule 25 of CER with option to redeem on payment of fine Rs. 20,000/- in lieu of confiscation. Further, penalty Rs. 15,512/- was imposed under Rule 25 of CER, 2002. The proposed demand of Rs. 13,087/- involved on the goods found short was confirmed and the amount already paid Rs. 12,323/- was appropriated and the balance demand remaining Rs. 764/-. Further proposed differential demand of Rs. 25,48,951/- involved on the molasses used in the manufacture of rectified spirit cleared at nil rate of duty under Rule 14 of CCR, 2004 read with Section 11 A of the Act was confirmed. Further, allowing appropriation of Rs. 20,27,790/-. There was balance demand remaining Rs. 5,21,161/-. Further penalty was Rs. 5,21,161/- was imposed under Rule 15 of CCR, 2004 read with Section 11 AC of the Act. Further, the proposed amount of Rs. 20,29,755/- involved on molasses transferred to M/s DSSL were disallowed under Rule 14 of CCR and further equal amount of penalty was imposed under Rule 15 of CCR read with section 11 AC of the Act. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals) who vide the impugned Order-in-Appeal dated 30 December, 2008 was pleased to dispose of the cross appeals arising from the common Order-in-Original. The appellant assessee had challenged the Order-in-Original as regards all the demands raised along with penalty and redemption fine, whereas the Revenue is in appeal on short levy or non-levy of penalty under Section 11 AC on the contention that the Order-in-Original have confirmed/demand of duty amounting to Rs. 25,48,951/- involved on the molasses used in the manufacture of rectified spirit cleared at nil rate of duty whereas penalty of only differential amount Rs. 5,21,161/- have been imposed. As per Revenue, the penalty of equal amount should have been imposed thus making prayer to impose the balance amount of penalty Rs. 20,27,790/- with a further penalty of Rs. 13,087/- on the duty confirmed on the quantity of goods found short at the time of inspection.

14. The learned Commissioner (Appeals) taking notice of the provisions of Rule 10 of CER, 2002, Rule 25 of CER, 2002 found that the appellant in their submissions have indicated that the variation in the stock is very nominal and had accepted the variation in stock and attributed this to be due to variation in temperature. Variation in temperature was not taken into account during verification by way of the dip method. It was held that the Adjudicating Authority had correctly confiscated the excess stock. With regard to the issue as regards demand of duty on shortage of finished goods/inputs the contention of the appellant that the shortage was due to evaporation during storage, because of the nature of the goods. Further, the appellant did not dispute the shortage and also reversed the Cenvat Credit of Rs. 12,323/- on inputs found short against demand Rs.

13,087/-. With regard to the issue of reversal of Cenvat Credit taken on exempted goods, rectified spirit, as proposed under Rule 6(3)(a)(i) amounting to Rs. 25,48,951/-. The learned Commissioner observed that the appellant have maintained two types of molasses stock register, one for molasses received from M/s DSM, Kashipur without payment of duty and the other for molasses received from other sugar units on payment of duty, but they had not maintained separate inventory of inputs used for dutiable goods and inputs used for exempted goods as required under Rule 6(3) of CCR, 2004. The appellant is thus, in the view of the Department have to reverse credit of Rs. 20,27,790/-. The appellant was required to pay or reverse the appropriate amount under the provision of Rule 6(3)(a) of CCR on the quantity of molasses used for manufacturing of rectified spirit. As regards the quantity of molasses stored outside the factory and/or allegedly diverted to M/s DSSL. The learned counsel held that the appellant had diverted the inputs to other units on which Cenvat Credit had been taken. Accordingly, holding that the appellant had not followed Rule 3(5) of CCR read with Rule 9 it was held that duty of Rs. 20,29,755/- is rightly demanded. As regards the Revenue appeal, the learned Commissioner has observed that the preventive officers detected the violations in the course of investigation, wherein the appellant deposited Rs. 12,323/- against due amount of Rs. 13,087/-. The appellant had not deducted the levy, on its own. So they had not reversed themselves under intimation to the Department. Accordingly, the appeal of the appellant assessee was dismissed and the appeal of Revenue was allowed and accordingly, penalty on shortage Rs. 13,087/- was confirmed along with penalty of Rs. 25,48,951/- on the molasses used for manufacture of rectified spirit (cleared duty-free).

15. Being aggrieved the appellant assessee is before this Tribunal. The learned counsel for the appellants submitted that molasses were used for manufacture of rectified spirit. They received molasses from three categories, namely, first received on payment of duty, second one comes from a unit which is availing area based exemption and the third category is the molasses manufactured by the unit themselves. These are stored in five tanks, and as per Rule 6 (2) of CCR, 2004, they are required to maintain separate accounts and they are maintaining separate accounts. The dispute is only about the method to be adopted for reversal of credit. The appellant have adopted the method of proportionate reversal of credit on the basis of molasses used in the manufacture of rectified spirit. Whereas the Department has taken a stand that the reversal of Cenvat Credit availed on molasses should be on FIFO basis. He further submits that in view of the fact that molasses were stored in the same tank and the same are being used simultaneously from time to time. Firstly rectified spirit is manufactured and thereafter some portion of rectified spirit is denatured, and is cleared on payment of duty.

Therefore, they would not be knowing the exact quantum of rectified spirit, which was denatured at any given point of time. In view of the above facts, he submitted that it is not possible for maintaining their accounts by following the FIFO method as done by the Revenue. As regards the second issue, he submits that because of shortage of storing space they had stored some of the molasses outside the factory and he fairly admits that permission of the Assistant Commissioner as required under Rule 8 of CCR had not been applied before storing the same outside the factory premises, in the facility of their sister unit. However, he submits that there is no allegation or finding of diversion of the molasses. He further submits that molasses is a commodity physically controlled by the State Excise officers. Not a single drop of molasses can be removed without obtaining the permission and requisite permit of the State Excise Authorities, and in this connection, he drew my attention to the accounts maintained by them, where the State Excise Inspectors signature is required every time when molasses is cleared. He also submitted that permission have been given by the Central Excise Department post facto. It is his submission that as per Rule 8, for confirming the duty demand, it is required to show that inputs received have not been used in the manner specified in the Rules and mere fact that the same has been stored outside the factory without permission of the Department, is not sufficient. The learned counsel also demonstrated the proper account of molasses kept from the register maintained under the State Excise Act and Rules, being Register No. MF – 6. Thus, it is the case of only venial breach of the provisions of Rule 8 of CCR, whether the duty can be demanded under Rule 3(5) of CCR, which provides for payment of duty, when inputs on which Cenvat Credit is taken, are removed as such. Such facts are not obtaining in the facts and circumstances and as such the demand of Rs. 20,29,755/- is fit to be set aside. So far the confirmation of duty and confiscation for the discrepancy and shortage or excess found, at the time of inspection, the learned counsel demonstrated that such difference and/or discrepancy is less than 10% and in some cases, even less than 5%. Further, the cogent explanation given for the shortage or difference was not found untrue and the order of confiscation and demand of duty on such nominal variation in the stock have been done mechanically, and is fit to be set aside.

16. The learned AR for Revenue submitted that in view of the fact that the molasses attracted different rates of duty during the period, the method followed by the appellant for reversal of credit on proportionate basis has resulted in loss of Revenue and the correct method to be followed was only the FIFO method. He submitted the duty have been correctly demanded in terms of Rule 8 read with Rule 3(5) of CCR, 2004. The learned counsel for the appellant also makes an alternate submission that the provision of Rule 6(2) of CCR

are not applicable in view of the fact that rectified spirit is not at all excisable and the Rule is applicable only when goods are exempted or attract nil rate of duty.

17. Having considered the rival submissions, I find that so far the order of confiscation and demand of duty on the raw materials and finished goods found short/excess, have been done mechanically and there is no material difference save and except nominal variation, which does not call for any adverse inference. So far the demand of Rs. 25,48,951/- under Rule 6(3)(a)(i) is concerned, I find that the method of proportionate reversal adopted by the appellants, cannot be faulted with and FIFO method cannot be followed as per the wish of the Revenue. Further, rectified spirit, though not excisable, I hold that Rule 6(2) is not applicable. Further as regards the demand of Rs. 20,29,755/- with respect to alleged diversion of clearance of inputs as such, I find that Rule 8 of CCR provides that the Deputy Commissioner and Assistant Commissioner having jurisdiction over the factory of the manufacture of the final products may, in exceptional circumstances, having regard to the nature of the goods and shortage of storage space at the premises of such manufacture, by an order, permit such manufacturer to store the input in respect of which Cenvat Credit has been taken, outside such factory, subject to such limitations and conditions as he may specify:

provided that where such input is not used in the manner specified in these Rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such input. Admittedly in the facts and circumstances, there is no case made out by Revenue that the appellant have not manufactured finished products from such inputs which were stored outside. Further, it is an admitted fact that the inputs stored outside were subsequently received back in the factory for which proper records are maintained as recorded in the Panchnama. Accordingly, I find that the show cause notice is not maintainable. Accordingly, I allow the appeal and set aside the impugned order. The appellant shall be entitled for consequential benefit, if any, in accordance with rules.

(Dictated and pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

Ankit

प्रमाणित प्रति/Certified True Copy
28/11/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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