FAX : 0532-2400149

REGISTERED / AD

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

Dated: 27/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71142/2017-EX[DB] dated 08/09/2017

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/COD/70189/2017	E/70398/2017	**Ms Balrampur Chinni Mills Ltd** Unit Babhanan GONDA UP
			Name and Address of Respondent
2			C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

--

--

Copy To

3 Advocate(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, 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, I-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 Guard File

Asstt. Registrar

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

APPEAL No: E/70398/2017-EX[DB]

(Arising out of Order-in-Original No. 38/COMMR/CX/2014-15 dated 04/02/2015 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Balrampur Chinni Mills Ltd. **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Lucknow **Respondent**

Appearance:

Shri Bipin Garg (Advocate) for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 08/09/2017
Date of Decision : 08/09/2017

FINAL ORDER NO-71142/2017

Per: Anil Choudhary

The present appeal is filed by the appellant-assessee against Order-in-Original No. 38/COMMR/CX/2014-15 dated 04/02/2015 passed by Commissioner, Central Excise & Service Tax, Lucknow.

2. Heard the parties.

3. The brief facts of the case are that the appellant is having composite mill comprising of Sugar Division and a Distillery Division. They are engaged in the manufacture of V.P. Sugar and Molasses, Rectified Spirit (RS), Special

Denatured Spirit (SDS), Ordinary Denatured Spirit (ODS) and Extra Neutral Alcohol (ENA). The show cause notice involves period September, 2007 to August, 2012. The dispute in the show cause notice narrates as under:-

4. They undertake manufacture of Sugar and Molasses in Sugar Mill and Molasses are further utilized in Distillery Division for manufacturer of Ethyl Alcohol through the process of fermentation. They are also availing Cenvat credit on input use in manufacture of rectified spirit and availing benefit of Notification No. 67/1995-CE(N.T.) dated 16/03/1995. The contention of Revenue is that with effect from 01.03.2005 Central Excise Tariff Item No. 22072000 covers Ethyl Alcohol and other spirit Denatured of any strength. Therefore, the product known as rectified spirit does not exist in Central Excise Tariff and on fermentation of Molasses rectified spirit comes into existence which does not find place in Central Excise Tariff. Therefore, though from said rectified spirit, denatured spirit is manufactured on which duty of excise is paid, the CENVAT credit chain gets snapped by coming into existence of product not finding place in Central Excise Tariff. Therefore, CENVAT credit on inputs and capital goods and input services going into manufacturer denatured spirit are not available to the appellant and they are also liable to pay duty on Molasses captively consumed. Therefore, the appellant was served with the show cause notice proposing recovery of allegedly wrongly availed

CENVAT credit and demand of duty on Molasses captively consumed with proposal for payment of interest and imposition of penalty. The said show cause notice was adjudicated through Order-in-Original, which is impugned order. The appellant submitted their defence before the original authority. They have stated that the process of manufacture of denatured spirit from fermentation of Molasses is a continuous process. On fermentation, Ethyl Alcohol is manufactured which is also called as rectified spirit. So as to make rectified spirit unfit for human consumption, denaturing is done by mixing rectified spirit with certain chemicals. Rectified spirit is nothing but Ethyl Alcohol. They are clearing denatured spirit on payment of duty and on clearance of rectified spirit the appellant was reversing the credit proportionately. They, further, contented that there are no provisions in the CENVAT credit Rules that if a non excisable product emerges in between the manufacture of excisable product in a continuous process, CENVAT credit is inadmissible. They have also contended that rectified spirit is finding place at Tariff Item No. 22072000 because Ethyl Alcohol and rectified spirit are not two different commodities. The original authority was not convinced with the arguments put forth by the appellant. He confirmed the demand and imposed penalty. Aggrieved by the said Order-in-Original the appellant is before us.

5. The grounds of appeal before us are more or less similar to their contentions before the original authority. One of the grounds states that Tariff Item No. 22072000 is provided for Ethyl Alcohol and other spirits, denatured, of any strength and contended that the description covered rectified spirit. They have further relies on various pronouncements.

6. Heard the learned counsel for appellant. He has reiterated his argument before the original authority and in the grounds of appeal and submitted various case laws. He has also submitted copy of Apex Court's ruling in the case of State of Uttar Pradesh and others Vs. M/s Modi Distillery etc. [1996 U.P.T.C.-312] he stated that in Para 9 of the said ruling the Hon'ble Supreme Court has given its observation about Ethyl Alcohol which clearly establishes that rectified spirit is nothing but Ethyl Alcohol and Ethyl Alcohol is finding the place in said Tariff Item No. 22072000. Therefore, rectified spirit cannot be presumed to be not having place in Central Excise Tariff with effect from 01.03.2005.

7. Heard the learned authorized representative of Revenue. He reiterated the findings of the Order-in-Original.

8. We have taken the rival contentions into consideration and also have gone through the case records. We find that the appellant have a composite unit where sugar and molasses are manufactured. Further the Molasses on fermentation in the distillery, Ethyl Alcohol is obtained. Ethyl Alcohol is denatured by mixing certain chemicals which make Ethyl

Alcohol unfit for human consumption. Before 01.03.2005 chapter Sub heading 2204.10 covered denatured ethyl alcohol of any strength and chapter Sub heading no. 2204.90 covered Ethyl Alcohol except alcoholic liquor for human consumption and undenatured ethyl alcohol. From 01.03.2005 Tariff Item No. 22072000 covered ethyl alcohol and other spirits denatured of any strength. This led the Central Excise authorities to think that pre-denatured ethyl alcohol does not find placed in Central Excise Tariff. We find that the show cause notice contends that rectified spirit is manufactured in between the process to manufacture denatured spirit and rectified spirit does not find place in Central Excise Tariff with effect from 01.03.2005 and therefore CENVAT credit is not admissible as inputs & input services and capital goods and benefit of Notification No. 67/95-CE(N.T.) not available on Molasses going into manufacture of rectified spirit and hence going into manufacture of denatured spirit. Before 01.03.2005, department accepted that rectified spirit is covered under chapter Sub Heading No.2204.90. As stated above, 2204.90 covers Ethyl Alcohol except one for human consumption and which are undenatured. Therefore, the issue to be decided is whether Ethyl Alcohol and rectified spirit are two different commodities or one and the same commodity. We find that the Hon'ble Supreme Court in the case of State of Uttar Pradesh Vs Modi Distillery and others (supra) in Para 9 has observed as follows :-

"The ISI specifications had divided ethyl alcohol into several kinds of alcohol. Beverages and industrial alcohols were clearly and differently treated. Rectified spirit for industrial process was defined as spirit purified by distillation having strength of not less than 95% by volume of ethyl alcohol."

9. It is very clear from the observation of Hon'ble Supreme Court that Ethyl Alcohol and rectified spirit are one and the same. We, therefore, hold that rectified spirit which is not used for human consumption is nothing but Ethyl Alcohol and is finding place in Tariff Item No. 22072000. We, therefore, hold that the show cause notice is not sustainable. As a result, we set aside the impugned order and allow the appeal with consequential relief. No Costs.

(Dictated & Pronounced in Court)

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

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Lks

प्रमाणित प्रति/Certified True Copy
11/10/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण(C.E.S.T.A.T.)
36, एम.जी.मार्ग, इलाहाबाद-211001
36, M. G. MARG, ALLAHABAD-211001