CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No.-I

Excise Stay Application No.70128 of 2021
(on behalf of appellant)
in
Excise Appeal No.70403 of 2021

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/18/2021-22 dated 30/04/2021 passed by Commissioner (Appeals) CGST & Central Excise, Meerut)

Pre. Commissioner of CGST, Meerut **.....Appellant**
(Meerut)

VERSUS

M/s Dwarikesh Sugar Industries Ltd. **....Respondent**
(Dwarikesh Nagar, Bundki, Bijnore, UP)

APPEARANCE:

Shri Aalok Arora, Advocate for the Appellant
Shri B. K. Jain, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

MISCELLANEOUS ORDER NO. - 70066 / 2022
FINAL ORDER NO. - 70119 / 2022

DATE OF HEARING : 04 August, 2022
DATE OF DECISION : 04 August, 2022

P. ANJANI KUMAR:

This miscellaneous application has been filed by the department seeking stay of the impugned order. Learned counsel for the respondent have submitted that the issue is squarely covered in their own case passed by this Tribunal vide Final order No.71076/2019 dated 30/05/2019 and following the decision of **Union of India vs. DSCL Sugar Ltd.**[1] Learned counsel for the respondent submits that excisebility of bagasse itself has been decided by the Apex Court in the case of **DSCL Sugar Ltd**. (supra). He submits that Hon'ble Apex Court held that it could not be pointed as to whether any process in respect of bagasse has been specified either in section 2(f) or after in absence thereof this deeming provision cannot be attracted otherwise it is not in dispute that bagasse only an agricultural waste and residue, which itself is not the result of any process. Therefore it cannot be treated as falling within the definition of section 2(f) of the Central Excise Act, 1994 and in the absence of manufacture, there cannot be any

[1]. 2015 (322) E.L.T. 769 (SC.).

excise duty; the Apex Court accordingly held that since the bagasse is not manufacture product rule 6 of Cenvat Credit Rules, 2004 have no application. He also submits that this Bench vide final order stated above has followed the above decision in the case of **DSCL Sugar Ltd**. held that issue is no longer *res itegra*. Learned authorized representative for the department submits that Hon'ble Apex Court of Allahabad in the case of **Balram Chini Mills vs. Union of India** 2019 (368) E.L.T. 276 (All.) has decided the issue in favour of the Revenue. He fairly submits that Supreme Court has dismissed SLP filed by the department on limitation. He also submits that Punjab & Haryana High Court in the case of Indian Sucrose Ltd. vs. Union of India has also decided the issue in favour of the Revenue however the SLP filed before Supreme Court pending. Learned authorized representative therefore submits that the issue has not attained finality.

2. Thus heard both the sides and perused the records of the case, I find that the issue is no longer *res integra* at least as per the appellant is concerned and as this Bench has already decided the issue in favour of the respondent vide Final order dated 30/05/2019 following the decision of the Apex Court in the case of **DSCL Sugar Ltd**. This being a case, the department cannot argue that the issue is yet to reach finality. Following the decision of this Bench cited above, I am of the considered opinion that the department has not made for more of stay and also not made any case in their favour on merits.

3. Therefore, the miscellaneous application filed by the department is rejected and consequentially appeal itself is dismissed.

(Dictated and pronounced in open court)

(P. ANJANI KUMAR)
Member (Technical)

LKS