

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No.271 of 2010

(Arising out of Order-in-Appeal No. No.460/2009 dated 10.11.2009
passed by the Commissioner of Central Excise (Appeals),
Mangalore.)

M/s. NSL Sugars Ltd.

(Formerly M/s. SCM Sugars Ltd.)
Koppa, Maddur Taluk,
Mandya,
Karnataka

Appellant(s)

VERSUS

The Commissioner of Central Excise

Mysore-I Division,
S-1 & S-2, Vinaya Marga,
Siddhartha Nagar,
Mysore – 570 011.

Respondent(s)

APPEARANCE:

Shri B. Venugopal, Advocate for the Appellant.

Shri H. Jayathirtha, Authorized Representative (AR) for the
Respondent.

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

FINAL ORDER NO. 20663 /2024

DATE OF HEARING: 16.04.2024

DATE OF DECISION: 20.08.2024

PER: D.M. MISRA

This appeal is filed against Order-in-Appeal No.460/2009
dated 10.11.2009 passed by Commissioner of Central Excise
(Appeals) Mangalore.

2. Briefly stated the facts of the case are that the appellant are engaged in the manufacture of Sugar/Molasses emerges falling under Chapter 17 of the Central Excise Tariff Act (CETA), 1985 and molasses emerge during the course of manufacture of sugar. Appellant are also having a distillery unit in their premises for manufacture of Rectified Spirit and Extra Neutral Alcohol. They were clearing molasses initially payment of duty and later claimed exemption under Notification No.67/1995-CE dated 16.03.1995 on the ground that it is used captively in the manufacture of Rectified Spirit in their distillery unit. During the period September 2007 to April 2008, they had utilised 16,500 MTs of Molasses manufactured for Captive consumption, on which they had claimed the exemption from payment of duty under Notification No.67/1995-CE dated 16.03.1995 as amended. They had paid a total duty amount of Rs.1,27,46,250/-, which later they claimed as refund on 12.08.2008 on the quantity of molasses cleared for captive consumption in their factory in the distillery unit for manufacture of Rectified Spirit and Neutral Alcohol during the said period. A show-cause notice was issued to them on 12.11.2008 proposing rejection of the said refund claim. On adjudication, refund claim was rejected by the Assistant Commissioner of Central Excise. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals), who in turn rejected their appeal. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant has submitted that in the impugned order, the refund has been primarily rejected on the ground that the molasses manufactured is captively consumed in the distillery unit in the manufacture of Rectified Spirit and Neutral Alcohol, which are exempted from duty and non-excisable, hence not eligible to the

exemption under Notification No.67/1995 dated 16.03.1995, as amended.

3.1 He has submitted that in the processes of manufacture of Sugar in their factory, molasses emerges as an inevitable by-product, which is cleared to their own distillery unit situated in the factory premises for further fermentation and distillation process, during which dutiable products like fuse oil, denatured ethyl alcohol carbon dioxide and exempted products like Ethyl Alcohol (Extra Neutral Alcohol)/Rectified Spirit emerges. Ethyl Alcohol is classified under chapter heading 2207 20 00 and is exempted by Notification No.3/2005-CE dated 24.02.2005. He submits that it is an excisable product as held by the Tribunal in the case of **Manakpur Chini Mills Ltd. V. CCE: 2017 (6) GSTL 188 (T)**, followed in **Bannari Amman Sugars Ltd. vs. Commissioner of Customs, C. Ex. & ST. Mysore: 2018 (362) ELT 705 (Tri.-Bang)**. Further, they have submitted that in terms of Clause (vi) of the Notification No.67/1995-CE 16.03.1995, the appellant had discharged the obligation under Rule 6 of the CCR, 2004, by reversing / paying an amount equivalent to the CENVAT credit attributable to the inputs and input services used in or in relation to the manufacture of molasses. Hence, they are eligible to the benefit of said Notification. In support, they have referred to the judgement in the case of **Godavari Sugar Mills Ltd.: 2007 (212) ELT 234 (Tri.-Bang)**, followed in the case of **Sri. Chamundeswari Sugars Ltd. Vs. CCE, Mysore: Final Order No.964/2007 dated 21.08.2007**. It is their contention that therefore the issue is no more *res integra* and also covered by the recent decision of the Tribunal in their own case vide Final Order No.20879-20886/2023 dated 25.08.2023.

3.2 Further, rebutting the arguments of the Revenue raised during the course of hearing that they have not complied with the provisions of Rule 6 of CCR, 2004, in as much as the appellants are required to reverse duty payable on molasses and not the credit attributable to the input/input services used in or in relation to the manufacture of molasses, he has submitted that the Revenue for the first time has canvassed a new plea which is completely extraneous to the case made out in the show-cause notice as well as in the original proceeding and also before the first appellate authority, therefore, the same cannot be raised at this stage, being contrary to the settled principle of law. In support, he relied on the following judgments:

- Commissioner of C. Ex., Chandigarh vs. Shital International: 2010 (259) ELT 165 (SC)
- Commissioner of Customs, Mumbai vs. Toyo Engineering India Ltd.: 2006 (201) ELT 513 (SC)
- Principal Commissioner vs. Fabrimax Eng. Pvt. Ltd.: 2018 (359) ELT 43 (Bom.)
- Warner Hindustan Ltd. vs. Collector of Central Excise, Hyderabad: 1999 (113) ELT 24 (SC)
- Gujarat State Fertilizers Co. vs. CCE: 1997 (91) ELT 3 (SC)
- Hindustan Polymers Co. Ltd. vs. CCE: 1999 (106) ELT 12 (SC)
- Reckitt & Colman of India Ltd. vs. CCE: 1996 (88) ELT 641 (SC)
- CCE vs. Sanghi Threads: 2015 (321) ELT 180 (SC)
- CCE vs. Sun Pharmaceuticals Indus. Ltd.: 2015 (326) ELT 3 (SC)
- Caprihans India Ltd. vs. CCE: 2015 (325) ELT 632 (SC)
- Baboochai Patel & Co. vs. CC: 1993 (68) ELT 734 (Bom.)
- Ananya Knitting Company vs. Joint Secretary: 2007 (211) ELT 378 (Mad.)

- CC, Ahmedabad vs. Krishna Petrochemicals: 2014 (304) ELT 744 (Tri.-Ahm.)

3.3 Further, he has submitted that the reversal of CENVAT credit has been carried out by them correctly in accordance with Rule 6(3)(i)(a) of CENVAT Credit Rules, 2004. He has submitted that molasses is an inevitable by-product during the course of manufacture of sugar. During the process of manufacture, at the time of crystallisation of sugar syrup into sugar, molasses emerge as a by-product. The said molasses are used in the manufacture of both dutiable as well as exempted product. The exemption under the said Notification No.67/95-CE is available to intermediary products used in or in relation to the manufacture of final product, however, the proviso to the said Notification stipulates that exemptions shall not be applicable when used in or in relation to the manufacture of final products which are exempt from duty of excise or chargeable to Nil rate of duty subject to the exceptions mentioned in clauses (i) to (vi) appended to the said Notification. In terms of Clause (vi), the exemption under the Notification would be available to the intermediate product i.e., molasses in the present case, used in or in relation to the manufacture of dutiable and exempted final product after discharging obligation prescribed under Rule 6 of CCR, 2004. Rule 6(3) provides option to the manufacturer or provider of output service, who does not maintain separate accounts to follow either of conditions (a), (b) or (c) stipulated therein, as applicable. As per condition (a), if the exempted goods are falling under Heading 22.04, the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to the inputs and input services used in or in relation to the manufacture of such final products at the time of clearance from their factory. In the present case, the input is molasses and they are required to pay an amount equivalent to the CENVAT credit

attributable to input and input services used in or in relation to manufacture of such final products. Therefore, in terms of the said Rule, an amount equivalent to the CENVAT credit attributable to inputs i.e., molasses which is required to be paid and also on that portion of molasses used in the manufacture of exempted goods. The appellant had reversed proportionate credit of inputs and input services attributable to the molasses and indicated in their ER-1 returns filed for the period July 2008, which is enclosed along with the refund application. The Tribunal in the case of **Shri Chamundeswari Sugars Ltd.** (supra), following the judgment of **Godavari Sugars Mills Ltd.** (supra) decided the issue in their favour. The ROM filed against the said order has been rejected and an appeal filed before the Hon'ble High Court also resulted in dismissal. Further, SLP filed before Hon'ble Supreme Court, against the order of the Hon'ble Karnataka High Court, also got dismissed.

4. The learned Authorised Representative for the Revenue reiterating the findings of the learned Commissioner (Appeals) has submitted that there is no *re judicata* and *estoppel* applicable to taxation/fiscal matters and in support, he has referred to various judgments of this Tribunal. Further, he has submitted that all along, the department has been asking the appellant to submit the bifurcation figure of molasses consumed in the dutiable and exempted product which had not been submitted.

4.1 The appellant during the course of hearing submitted a copy of the refund application along with copy of statement showing the input credit reversed amounting to Rs.2,03,829/- for the period September 2007 to April 2008. He has submitted that the said reversal is not in compliance of Rule 6 read with proviso to Notification No.67/95-CE dated 16.3.1995. In the

Final Order No.964/2007 dated 21.8.2007 in the case of Shri Chamundeswari Sugar Ltd., the Tribunal observed that the appeal is allowed subject to the condition that the appellant reverses the input credit attributable to inputs used in the manufacture of molasses which in turn was used in the manufacture of Rectified Spirit/Neutral Alcohol. It is clear that they had reversed the credit attributable to inputs used in the manufacture of molasses and not the credit attributable to inputs used in the manufacture of exempted final product. Further, he has submitted that any interpretation and/or judgment contrary to the statutory provisions be considered as *per incuriam* and not a binding precedent.

4.2 Referring to Rule 6 of CCR, the learned AR has submitted that the appellant reversed the proportionate CENVAT credit attributable to the inputs used in the manufacture of molasses which is the first stage in the manufacture of sugar and molasses; and in the second stage of manufacturing wherein ethyl alcohol and denatured spirit is manufactured, molasses becomes the main input and as per Rule 6(3)(a)(i), proportionate credit involved in the inputs and input services that are further used in the manufacture of exempted final products are required to be reversed, which would be sufficient compliance for availment of exemption under Notification No.67/95-CE dated 16.3.1995. The appellant is claiming exemption on molasses, thus, the inputs involved in this transaction is molasses and the credit attributable to inputs i.e., molasses used in the manufacture of exempted goods is to be reversed.

4.3 Further, the Rule 6 applicable to the product being manufactured by them is classifiable under Heading 2204 specified that when they do not maintain separate accounts and

also not paying 10% of the value of the exempted goods, shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in or in relation to the manufacture of final products. The appellant has not availed credit of duty paid on molasses but opted to avail captive consumption benefit which is eligible for the quantity of molasses used in the manufacture of dutiable goods and required to pay appropriate duty on the quantity of molasses used in the manufacture of exempted goods. Since the appellant has not complied with the provisions, therefore, their refund has been rightly rejected.

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal for consideration is: whether the appellants are eligible to refund of excise duty paid during September 2007 to April 2008 on by-product molasses, on its captive consumption (being exempted under Notification No. 67/95CE dated 16.3.1995, as amended) for the manufacture of exempted final products viz., Rectified Spirit and Extra Neutral Alcohol.

7. Undisputed facts are that the appellants are manufacturing sugar and in the process of manufacturing of sugar, molasses emerge as a by-product which in turn used in the manufacture of dutiable products viz., Fuse Oil, Denatured Spirit, Ethyl Alcohol and Carbon dioxide; and also exempted products viz., Rectified Spirit and Extra Neutral Alcohol. The appellant had initially discharged duty on the said molasses for the period September 2007 to April 2008. Later, they filed a refund claim of the duty paid pleading that molasses consumed captively, eligible for exemption under Notification No. 67/95-CE dated 16.3.1995, since they have complied with the Condition (vi) of the

Notification No.67/1995-CE dated 16.3.1995. Therefore, molasses even if used in the manufacture of exempted products viz., Rectified Spirit and Extra Neutral Alcohol still eligible to avail exemption.

8. The relevant Notification No.67/95-CE dated 16.3.1995 as amended and in force during the relevant period is as follows:

NOTIFICATION NO.67/1995-Central Excise, Dated, March 16, 1995

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts –

- (i) capital goods as defined in CENVAT Credit Rules, 2002 manufactured in a factory and used within the factory of production;
- (ii) goods specified in column (2) of the Table hereto annexed (hereinafter referred to as 'inputs') manufactured in a factory and used within the factory of production in or in relation to manufacture of final products specified in column (3) of the said Table; from the whole of the duty of excise leviable thereon which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) :

Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products which are exempt from the whole of duty of excise leviable thereon or are chargeable to 'Nil' rate of duty, other than those goods which are cleared,-

- (i) to a unit in Free Trade Zone, or
 - (ii) to a Hundred Percent Export Oriented Undertaking, or
 - (iii) to a unit in a Electronic Hardware Technology Park,
- or

- (iv) to a unit in a Software Technology Park, or
- (v) under Notification No. 108/95-CE dt. 28.08.1995, or
- (vi) by the manufacturer of dutiable and exempted final products after discharging obligation prescribed in Rule 6 of Cenvat Credit Rules, 2001

Description of inputs	Description of final products
(1)	(2)
All goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol	All goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the following, namely, -
	(i) matches (ii) fabrics of cotton or man-made fibres falling under chapter 52, chapter 54 or chapter 55 of the First Schedule to the said Act. (iii) Fabrics of cotton or man-made fibres falling under heading No.58.01, 58.02, 58.06 (other than goods falling under sub-heading No.5806.20), 60.01 or 60.02 (other than goods falling under sub-heading No.6002.10) of the First Schedule to the said Act.

9. The crux of the issue is that in the event the appellant complied with the condition of Clause (vi) of the said Notification by discharging the obligation prescribed in Rule 6 of CCR, 2001 then even if molasses are used in the manufacture of exempted products, they could claim exemption on molasses. The relevant conditions of Rule 6(3)(a)(i) reads as follows:

"Rule 6. Obligation of a manufacturer or producer of final products and a provider of output services -

(1)

(2)

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer or provider of output service, opting not to maintain separate accounts, shall follow either of the following conditions, as applicable to him, namely:

(a) if the exempted goods are -

(i) goods falling within Heading No.22.04 of the First Schedule to the Excise Tariff Act (hereinafter in this rule referred to as the said First Schedule)"

(ii)

(iii)

(iv)

(v)

(vi)

(vii) ...

the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of such final products at the time of their clearance from the factory;

10. The said condition has been interpreted by the Tribunal in **Godavari Sugar Mills Ltd.** (supra) case, it has been observed that:

"7.1 In respect of M/s. Godavari Sugars Ltd., the appellants pay Central Excise duty on the molasses cleared to their Distillery Unit avail the credit on the same for manufacture of Rectified Spirit. A part of Rectified Spirit is converted to Denatured Spirit. The contention of the department is that the appellants cannot take credit of the duty paid on molasses because the final product Rectified Spirit is not liable to pay Central Excise. On this ground, the Modvat credit has been denied. In respect of M/s. Renuka Sugars Ltd., the appellants have cleared the molasses without payment of duty availing exemption under Notification 67/95. In the case of M/s. GMR Industries, the benefit of notification for captively consumed molasses has

been availed. However, in all the cases the appellants have reversed the Cenvat credit attributable to exempted product.

7.2 It is the contention of the appellants that the reversal satisfies the conditions of Notification 67/95 read with Rule 6 of Cenvat Credit Rules, 2002. Notification 67/95 grants exemption from payment of duty on an intermediary product which is captively consumed for manufacture of excisable goods. Molasses is an excisable product. When molasses is used in the manufacture of some other excisable product, then the molasses captively consumed need not discharge any duty burden. However, the entitlement to Notification 67/95 is subject to a condition. The condition is that the final product should be dutiable or otherwise the exemption would not be applicable. According to Revenue, when molasses is used in the manufacture of Rectified Spirit, the Rectified Spirit, which emerges, is not excisable. Therefore, the Notification benefit cannot be available. This is the main contention of the Revenue for denying the benefit of Notification to molasses captively consumed. However, it is the appellant's contention that the molasses is not completely used for the production of exempted/non-dutiable product because a part of Rectified Spirit is converted to Denatured Spirit, which is dutiable. Our attention was invited to amendment to Notification No. 67/95-C.E. by Notification No. 31/2001-C.E. dated 1-1-2001. In terms of the said amendment, the appellants are entitled for the benefit of exemption Notification in a situation where there is manufacture of both dutiable and exempted final products, provided the manufacturer discharges the obligation prescribed in Rule 57AD of the Central Excise Rules, 1944, which is *pari materia* with Rule 6 of the Cenvat Credit Rules, 2002. This is the point urged by the appellants. What is the obligation under Rule 6 of the Cenvat Credit Rules, 2002? The obligation under Rule 6 of Cenvat Credit Rules is that when a manufacturer uses input both for exempted and dutiable final products, he should maintain separate accounts because no Cenvat credit is available for the inputs used in exempted products. There is an option for the manufacturer not to maintain two separate accounts. Once he exercises the option, it is sufficient if he pays 10% of the sale price of the exempted products. But certain goods have been specified in respect of which the obligation would be to reverse the credit attributable to the inputs used in the manufacture of exempted final products. In the present case, Rule 6(3)(a)(i) specifically refers to goods falling under 22.04 of the First Schedule (presently 22 07 20). In other words, where the final product is ethyl alcohol and other spirits denature of any strength, it is sufficient if the Cenvat credit attributable to inputs in the exempted product is reversed or paid. This obligation from the records of the case appears to have been discharged in respect of all the appellants. Therefore, the appellants are

entitled to the benefit of Notification No. 67/95 in respect of molasses used captively for manufacture of Rectified Spirit and Denatured Spirit. Therefore, the demand of duty in respect of the credit taken on molasses is not correct.”

11. The said judgment has been later followed by the Tribunal in the case of Shri Chamundeswari Sugar Mills Ltd. vs. CCE vide Final Order No.964/2007 dated 21.08.2007. Also recently, this Tribunal in appellant’s own case vide Final Order No.20879-20886/2023 dated 25.08.2023 had followed the ratio laid down in the above case.

12. The learned Authorised Representative for the Revenue has vehemently argued that the appellant has not correctly complied with the condition laid down in Rule 6(3)(a)(i) of the CCR, 2004, in as much as, the appellant are required to discharge duty on the intermediate product, in the event, the same is used in the manufacture of final product which are exempted or to comply the provisions of Rule 6 of CCR, 2004. In the present case, the appellant had reversed proportionate credit attributable to manufacture of molasses which cannot make them eligible to claim exemption Notification No.67/95-CE on molasses used in the manufacture of exempted goods, which is the second stage of manufacture of Ethyl Alcohol and denatured spirit. Thus, the credit attributable to the inputs i.e., molasses used in the manufacture of exempted goods is to be statutorily reversed. We do not find merit in the argument of the learned Authorised Representative for the Revenue in as much as non-compliance of provisions of Rule 6 of CCR, 2004 has not been specifically alleged in the show-cause notice. Also, on merit, we find that this Tribunal has already in the above cases analysing the relevant provisions of Rule 6 of CCR, 2004 has taken a view that credit on inputs availed and used in the manufacture of molasses, an input

and intermediate by-product, which in turn is used in the manufacture of exempted final products viz., Ethyl Alcohol and denatured spirit, therefore, inputs attributable to the manufacture of molasses, on its reversal, is a sufficient compliance of Rule 6 of CCR, 2004; hence, eligible to the benefit of Notification No.67/95-CE dated 1.3.1995.

8. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 20.08.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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