CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No.725 of 2012

(Arising out of Order-in-Appeal No.42/2012 dated 27.01.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

M/s. Sri Chamundeswari Sugars Limited
Srinivasapura,
Channarayapatna Taluk,
Hassan District – 573 201.

Appellant(s)

VERSUS

The Commissioner of Central Excise
Mysore Commissionerate,
Mysore.

Respondent(s)

WITH

Central Excise Appeal No. 726 of 2012

(Arising out of Order-in-Appeal No. 167/2012 dated 20.03.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore)

M/s. Sri Chamundeswari Sugars Limited
Bharathi Nagar, K. M. Doddy,
Maddur Taluk,
Mandya District-571 422.

Appellant(s)

VERSUS

The Commissioner of Central Excise
Mysore Commissionerate,
Mysore.

Respondent(s)

APPEARANCE:

None for the Appellant.

Shri Akshay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20009-20010/2025

DATE OF HEARING: 21.11.2024
DATE OF DECISION: 07.01.2025

PER: R. BHAGYA DEVI

These appeals are filed by the appellants against Order-in-Appeal No. 42/2012 dated 27.01.2012 and Order-in-Appeal No. 167/2012 dated 20.03.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.

2. Brief facts of the case are that the appellants are manufacturers of excisable goods i.e., Sugar and Molasses falling under Chapter 17 of the Schedule to the Central Excise Tariff Act, 1985. They availed cenvat credit of duty paid inputs, capital goods, input services under Cenvat Credit Rules (CCR), 2004. During the course of audit by the officers of IAP, it was seen from their records that appellant had availed irregular cenvat credit on HR coil, HR sheets and cement which were intended for construction of factory / office building. Show-cause notices were issued to the appellants for recovery of irregular availment of cenvat credit along with interest under Rule 14 of CCR, 2004 and proposing imposition of penalty under Rule 15(2) of CCR, 2004. On adjudication, the demands were confirmed along with interest and penalty. Aggrieved by this, appellants preferred appeals before the learned Commissioner (A), who upheld the Order-in-Original. Hence, the present appeals.

3. None present for the appellants. Learned advocate for the appellant vide their written submissions dated 20.11.2024 submitted that both these appeals involve similar issue but for different period wherein cenvat credit was denied on the inputs used by the appellant in their co-generation plant. He also submitted that the issue is no longer *res integra* and is covered

by the decision of the Bench in their own case vide **Final Order No.21237/2018 dated 29.08.2018**.

4. Learned Authorised Representative (AR) for the Revenue reiterated the findings of the lower authorities.

5. Heard learned AR for the Revenue and perused the grounds of appeals and the written submission filed by the appellant. In Appeal No. E/726/2012, the benefit of cenvat credit was denied on goods namely HR sheets, HR coils used for construction purpose, which was upheld by the Commissioner (Appeals) in the impugned order. Relied on the decision of the earlier order of the Commissioner (Order-in-Original No. 5/CCE/2008 dated 22.12.2008 which was appealed against before the CESTAT) which is set aside by this Tribunal vide Final Order No.21237/2018 dated 29.08.2018, wherein it was observed as:

> "6. Heard both sides and perused the records of the case. We find that that the issue involved in the case is availability of the credit on TMT Bars/Rods/Angles falling under Chapter 72 and 73 which are used in the power generation Co Gen plant set up by the appellants in their factory. The part of the power generated is utilized by the appellants and part of it is transmitted to KPTCL. We find that the issue is no longer ras integra as submitted by the learned counsel for the appellants. The issue is settled by various judgments cited above. We find that this Bench in the case of Nizam Deccan Sugars Ltd. (Supra) held that capital goods used in Go-Gen power plants for generation of electricity part of which is used by the manufacturers of final product and part of it is sold to power distribution companies are admissible for credit."

In view of the above, the impugned order cannot be sustained, hence, set aside.

6. In Appeal No. E/725/2012, the cenvat credit is denied on cement, which is used for construction of Co-Generation plant. The Commissioner (Appeals) in the impugned order vide Order-in-Appeal No. 42/2012 upheld the view of the original authority

on the ground that the cement was excluded under the definition of 'input'. The appellant had availed Cenvat Credit on cement during April 2010 and the definition of 'input' was amended vide Notification No. 16/2009-CE (NT) dated 07.07.2009 which reads as follows:

> *"2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 2, in clause (k), in Explanation 2, after the words "factory of the manufacturer", the following shall be inserted, namely:- "but shall not include cement, angles, channels, Centrally Twisted Deform bar(CTD) or Thermo Mechanically Treated bar(TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods".*

6.1 In view of the above amendment to the definition of 'input' where cement is specifically excluded, the denial of cenvat credit on cement is justified. The reliance placed on the Final Order (supra) in the appellant's own case is of no relevance in view of the amendment to the Cenvat Credit Rules, 2004. Accordingly, cenvat credit on cement is denied. Since, the cenvat credit has already been paid and appropriated, penalty is set aside.

7. In the result, Appeal No. E/726/2012 is allowed and in Appeal No. E/725/2012 denial of cenvat credit is upheld and the impugned order stands modified only to the extent of setting aside the penalty.

(Order pronounced in Open Court on 07.01.2025.)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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