

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

REGIONAL BENCH, COURT NO. 2

Central Excise Appeal No. 27074 of 2013

(Arising out of Order-in-Original No. 8/2013/MYS/CEX/Commr dated 02.04.2013 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysore.)

M/s. Sri Chamundeswari Sugars Ltd.,

K.M. Doddi, Bharathi Nagar,
Maddur,
Mandya – 571 422.

.....Appellant(s)

VERSUS

**The Commissioner of Central Excise,
Customs and Service Tax,**

Vinaya Marga, Siddharthanagar,
Mysore – 570 011.

.....Respondent(s)

WITH

Central Excise Appeal No. 20392 of 2018

(Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-118-17-18 dated 14.11.2017 passed by the Commissioner of Central Tax (Appeals), Mysore.)

**The Commissioner of Central Excise,
Customs and Service Tax,**

S1 & S2, Vinaya Marga,
Siddharthanagar,
Mysore – 570 011

.....Appellant(s)

VERSUS

M/s. Sri Chamundeswari Sugars Ltd.,

K.M. Doddi, Bharathi Nagar,
Maddur,
Mandya – 571 422.

.....Respondent(s)

Appearance:

Mr. B. Venugopal and Mr. Bharathi, Advocates for the Appellant

Mr. H. Jayathirtha, Authorized Representative (AR) for the Revenue.

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 20334-20335 /2025

Date of Hearing: 20.09.2024

Date of Decision: 19.03.2025

Per: P. A. Augustian

The issue in the present appeals is whether the benefit of exemption Notification No. 67/1995-CE dated 16.03.1995 as amended can be extended for captive consumption of molasses used in manufacture of Ethyl Alcohol/ Rectified spirit.

2. The brief facts are the Appellant is engaged in the manufacture of sugar and other excisable products. During the manufacture of the sugar, 'molasses' emerge as a byproduct and appellant is using 'molasses' in their own distillery, which is adjacent to appellant's sugar factory for manufacture of both dutiable goods as well as exempted goods without payment of duty, claiming the benefit of Notification No. 67/1995-CE dated 16.03.1995. Alleging that the appellant is not eligible for the benefit of said Notification, appellant was directed to pay an amount of Rs. 6,26,97,286/- for the period from August 2005 to August 2007 and appellant paid the same under protest. Thereafter, Show Cause Notice was issued, and the respondent vide order dated 22.01.2007 confirmed the demand of duty along with interest and appropriated Rs. 6,26,97,286/- and also vacated the protest. Assailing the said order, an appeal was filed before this Tribunal and Tribunal vide Final Order No. 964/2007 dated 21.08.2008 allowed the appeal on the condition that appellant should reverse the input credit attributable to the inputs used in the manufacture of molasses, which in turn were used in the manufacture of Rectified Spirit (RS) / Extra Neutral Alcohol (ENA). Accordingly, appellant reversed the input credit and there after

refund claims filed by the appellant were sanctioned by the Respondent vide orders dated 11.02.2008. Thereafter, Revenue filed ROM before this Tribunal for recalling and modification of Final Order No. 964/07 dated 21.08.2007, on the ground that the final products viz, Rectified Spirit / Extra Neutral Alcohol manufactured by the appellant are exempted/non-excisable goods. The said ROM application was dismissed by this Tribunal on the grounds of delay and the appeal before the Hon'ble High Court of Karnataka was dismissed and further appeal before the Supreme Court was also dismissed.

3. In view of the above the respondent for the period covered by Final Order No. 964/07 dated 21.08.2007, as well as for the subsequent periods issued 31(thirty) Show cause notices (SCNs) for the period from August 2005 to November 2012 demanding Rs. 20,22,88.036/- which were adjudicated by common Order No. 08/2013/MYS/CEX/Commr, dated 30.03.2013, wherein the Adjudication Authority confirmed the demand along with interest. Aggrieved by said order Appeal No. E/27074 of 2013 was filed before this Tribunal.

4. As regards Appeal No. E/20392/2018, filed by the department it is with respect to the Show Cause Notice demanding Rs. 1,46,62,568/- and Statement of Demand for Rs.1,65,75,000/- dated 28.04.2016 and 20.10.2016, respectively on the same issue for the period from April 2015 to September 2015 and for the period from October 2015 to March 2016, wherein the Adjudicating Authority confirmed the demand along with interest and imposed penalty under Rule 25 of the Central Excise Rules, 2002. The said order was challenged by the appellant and as per the impugned Order-in-Appeal No. MYS-EXCUS-000-APP-118-17-18 dated 14.11.2017, following the decisions of the Hon'ble Apex Court

in the similar issues, the Appellate Authority has set aside the above said demand. Aggrieved by the said order Appeal No. E/20392/2018 was filed by the Revenue before this Tribunal.

5. Since both the appeals are on the same issue, both the appeals were taken up for hearing and disposal.

6. The Appellant submits that the process of manufacture of sugar carried out in their factory is a continuous process during which the 'molasses' emerges and is removed to their own distillery for further fermentation and distillation process, which results in emergence of ethyl alcohol. Ethyl alcohol, which is also known as 'rectified spirit' is an excisable goods classifiable under CETH 22072000 and thus finds specific mention in the CETA, 1985, after its amendment in 2005 (when it was made into 8 digits). The Ld. counsel draws our attention to the decision of the Hon'ble Tribunal in the case of M/s.Manakpur Chini Mills Ltd. Vs. CCE - 2017 (6) GSTL 188 (T), wherein it was held that -

"6. We have taken the rival contentions into consideration and also have gone through the case records and paper books submitted during the hearing. 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 1-3-2005 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 1-3-2005 Tariff Item no. 2207 20 00 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 place 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 1-3-2005 and therefore CENVAT credit is not admissible as inputs & input services and capital goods going into manufacture of rectified spirit and hence going into manufacture of denatured spirit. Before 1-3-2005, 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 v. 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 a strength of not less than 95% by volume of ethyl alcohol."

It is very clear from the observation of the Hon'ble Tribunal 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. 2207 20 00. We, therefore, hold that the show cause notices are not sustainable. As a result, we set aside the impugned orders and all the appeals with consequential reliefs. No Costs."

7. The Appellant further relied upon the decision of the Hon'ble Tribunal in the case of **Bannari Amman Sugars Ltd. Vs. Commr. of Cus., C.Ex & ST., Mysore 2018 (362) ELT 705 (Tri- Bang)**, wherein relying upon the decision of M/s. Manakpur Chini Mills, supra, it was held as follows;

"6. After hearing both sides and perusal of the records, we note that the crux of the dispute is regarding duty liability on molasses

which is captively consumed, to the extent used in the manufacture of alcohol for human consumption. Such alcohol is not levied to Central Excise duty but are cleared on payment of State Excise duty.

6.1 The Notification No. 67/95 is not available in respect of inputs used in the manufacture of final products which are exempted from whole of duty or chargeable to 'nil' rate of duty. The question for consideration is whether alcohol for human consumption which is not charged to Central Excise duty will fall under either of the above categories. The above question is answered in favour of the appellant in the case of Manakpur Chini Mills Ltd. (supra).

7. By following the above decision, we set aside the impugned order and allow the appeal filed by the appellant."

8. The Learned counsel for the appellant during the hearing submits that the issue is no more *res-integra*. The issue is settled in favor of the appellant as per the judgment of the Hon'ble Supreme Court in the case of **Commr. of Cus., C.Ex & ST., Vs. Dharani Sugars & Chemicals Ltd.**, reported in **2022 (379) ELT (556)(SC)**. And also in appellant's own case, this Tribunal vide **Final order No. 20879 – 20886/2023 dated 25.08.2023** reported in **2023 (8) TMI 1318 – CESTAT BANGALORE, M/s. NSL Sugars Ltd., Vs. Commissioner of Central Excise, Mysore-I Division** reported in **2024 (8) TMI 992 CESTAT BANGALORE**, and in the matter of **M/s. Bannari Amman Sugars Ltd. Vs. Commissioner Central Excise Mysore III Division, Mysore** reported in **2024 (8) TMI 1447 CESTAT Bangalore**, set aside the demand on the ground that Ethyl Alcohol and Rectified Spirit

are one and the same and is finding place in first schedule to the Central Excise Tariff, 1965 as Central Excise Tariff Item 2207 20 00.

9. Learned Counsel further submits that for recovery of the refund granted as per the Final Order of this Tribunal, respondent should not have issued Show Cause Notice under Section 11A of the Central Excise Act, 1944 and the proper course is to follow the procedure laid down under Section 35E of the Central Excise Act, 1944. The order sanctioning refund was issued on 11.02.2008. If respondent was aggrieved by said order, it was open for the department to file an appeal against said order under Section 35E of the Central Excise Act, 1944. However, once the refund was not challenged in the appeal and attained finality, issue of Show Cause Notice for recovery of refund amount cannot be sustained as per the law laid down by the Apex Court in the case of **ITC Ltd., Vs. Commissioner of Central Excise, Kolkata-IV reported in 2019 (368) ELT 216 (SC)**.

10. Learned Authorized Representative (AR) reiterated the findings in the impugned order.

11. Heard both sides and perused the records.

12. We find that the issue is no longer *res integra*. Hon'ble Supreme Court in the matter of **Dharani Sugars & Chemicals Ltd., (supra)** and Tribunal in appellant's own case vide Final order No. 20879 – 20886/2023 dated 25.08.2023 has set aside the demand.

13. In view of the above discussion, the impugned order dated 14.11.2017 confirming demand along with interest proposed in the 31(thirty one) show cause notices is unsustainable. Accordingly, the Excise Appeal No. 27074 of 2013 is allowed with consequential relief, if any, as per law.

14. As regards Appeal No. E/20392/2018 filed by the department, following the ratio of the judgment of Hon'ble Supreme Court in the matter of **Dharani Sugars & Chemicals Ltd., (supra)** and the Tribunal in appellant's own case vide Final order No. 20879-20886/2023 dated 25.08.2023, the appeal is dismissed.

(Order pronounced in Open Court on 19.03.2025)

(P. A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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