CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 21892 of 2014

(Arising out of Order-in-Appeal No. MYSC-EXCUS-000-AC-DIVI-APP-HAB-025-2014 dated 05.03.2014 passed by Commissioner of Central Excise (Appeals), Mysore)

M/s. Kothari Sugars and Chemicals Limited
No. 115, Mahatma Gandhi Salai,
Nungambakam, Chennai,
Tamil Nadu - 600034 **.......... Appellant**

VERSUS

Commissioner of Central Excise,
Customs & Service Tax, Mysore Commissionerate
S1 & S2, Vinaya Marga,
Siddartha Nagar,
Mysore, Karnataka - 570011 **....... Respondent**

Appearance:

Mr. Joseph Kodianthara, Ms. Radhika Sriranjini Advocates for the Appellant
Shri H. Jayathirtha, Authorised Representative for the Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>Final Order No. 21398 /2025</u>

Date of Hearing: 17.09.2024
Date of Decision: 13.03.2025

Per: Pullela Nageswara Rao

This appeal is filed against Order-in-Appeal No. MYSC-EXCUS-000-AC-DIVI-APP-HAB-025-2014 dated 05.03.2014 passed by Commissioner of Central Excise (Appeals), Mysore.

2. The issue in the present appeal is whether refund claim filed by the appellant is hit by limitation.

3. The facts in brief are the appellant is a manufacturer of sugar, and sugarcane is the raw material for the final product sugar. During

the process of manufacture of sugar, sugarcane is crushed and juice is extracted and 'Bagasse' emerges as residue/waste of the sugarcane, which is neither a manufactured product nor a final product of the sugar industry. However, alleging that appellant failed to pay duty on sale of 'Bagasse', an audit objection was raised and considering the same appellant had paid an amount of Rs. 10,02,655/- vide debit entry No. 1 of 2011 dated 05.02.2011 in RG-23C under protest even though 'Bagasse', according to the appellant is a waste obtained during manufacture of sugar and cannot be regarded as final product and is exempt from duty. Thereafter, appellant filed a refund claim for an amount of Rs. 13,06,291/- which includes interest. Respondent issued a show cause notice (SCN) proposing to reject the Refund claim. Thereafter, Adjudicating authority on adjudication rejected the refund claim on the ground that it is barred by limitation under Section 11B of the Central Excise Act, 1944. Aggrieved by the said order an appeal was filed before the Commissioner (Appeals) who has upheld the order of the Adjudicating authority. Aggrieved by the said order present appeal is filed before this Tribunal.

4. Learned counsel for the appellant during the hearing submits that once the impugned item 'Bagasse' itself is not subject to duty, payment wrongly made either voluntarily or under protest is liable to be refunded and withdrawal of under protest letter has no effect. Further, submits that the limitation as provided for under Section 11B of the Central Excise Act, 1944 is not applicable as the amount paid cannot be considered as duty of excise.

5. Learned counsel further submits that as per the law laid down by the Hon'ble Supreme Court in the matter of **UOI Vs. ITC Ltd - (1993) 67 ELT 3** it is held that; once the duty is collected without authority of law, bar of limitation as provided for in Section 11B of Central Excise and Salt Act, 1944 is not applicable when assessee is not guilty of any latches in claiming of refund.

6. Learned counsel also draws our attention to the judgment of the Hon'ble High Court of Gujarat in the matter of **M/s. Binani Cement Ltd. Vs. Union of India-2013 (288) ELT 193,** wherein it is held that Limitation Act would not apply, where the duty is collected without

authority of law as the same is opposed to Article 265 of the Constitution of India. Learned Counsel further draws our attention to the decision of the Hon'ble Gujarat High Court in the case of **M/s. Shree Ram Food Industries Vs. Union of India -2003 (152) ELT 285 (Guj)**. Further, learned counsel draws our attention to the decision of Hon’ble High Court of Karnataka in the case of **CCE Vs. KVR Construction-2012 (26) STR 195,** wherein it is held that mere payment of amount could not authorize Department to regularize/validate and retain it and refund could not be rejected on ground of limitation under Section 11B of Central Excise Act, 1944.

7. Learned Counsel draws our attention to the decisions of the Tribunal in the matter of **Central Excise, Bhopal Vs. Birla Erickson Optical Ltd. - 2007 (212) ELT 213, D. Cawasji and Co. Vs. State of Mysore, 1978 (2) ELT J154, ITC Ltd. Vs. M.K Chipkar and others (1985) 19 ELT 373, New India Industries Ltd. Vs. UOI (1990) 46 ELT 23, Hardy Exploration & Production (I) INC. (2012) 28 STR 513.**

8. Further, learned counsel relied on **Ponni Sugars Vs. CCE** - Final Order No. **40353/2022** - CESTAT**,** CHENNAI and submits that the issue is no more *res-integra*, this Tribunal in the matter of **M/s. Daurala Sugar Works Vs. Commr of Central GST, Meerut Vide Final Order No. 70409/2024** dated 21.03.2024 considered the issue and held that;

> *“8. Since the Appellant filed the refund claim on 04.03.2016 I.e. within 6 months from the date of Hon'ble High Court's order (18.08.2015), the Appellant's claim was within the statutory period of one year from the relevant date as specified in Section 11B of CEA, 1944. The Commissioner (Appeals) erroneously held that refund claim in respect of amounts voluntarily reversed during the period in dispute is barred by limitation of time. That since in the generation of electricity (non-excisable goods), the Appellant have used bagasse which itself was non-dutiable nor manufactured product, the provisions of Rule 6(3) calling for reversal of CENVAT credit were not applicable. Whatever amount*

of CENVAT credit reversed by the Appellant, the same is in the nature of revenue deposit and the limitation period of Section 11B does not apply to refund of revenue deposit. That w.r.t. reversal of duty under the provisions of Rule 6(3) of CCR, 2004, in respect of inputs used in the manufacture of bagasse which is non-dutiable and non-manufactured product, the Tribunal, in the case of Triveni Engineering & Industries Ltd. Vs. CCE, Lucknow reported in 2018 (363) E.L.T. 331 (Tri.-All.) has held that since bagasse is not a dutiable item and not a manufactured item, as held by the Supreme Court, there was no question of duty under Rule 6(3) of CCR, 2004. In such a case, the amount reversed by the Assessee under Rule 6(3) is in the nature of revenue deposit on which the refund provisions of Section 11B are not applicable. The Appellant rely upon this ruling to plead that the entire credit of Rs.39,78,832/- reversed by them erroneously under Rule 6(3A) of CCR, 2004 was in the nature of revenue deposit and the same became refundable to the Appellant as the natural remedy out of order passed by the Hon'ble Allahabad High Court in the Appellant's case.

....

13. In view of the above discussions, I hold that under the fact and circumstances of the case, Bagasse is not a dutiable item and not a manufactured item, as held by the Hon'ble Supreme Court, there was no question of any reversal of duty under the provision of Rule 6(3) of Cenvat Credit Rules, 2004. Under such facts and circumstances, I hold that the amount reversed by the Appellant under Rule 6(3) of CCR was in the nature of revenue deposit."

9. Learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order and also draws our attention to the decision in **Lupin Ltd Vs. Commr. of C.Ex., Indore – 2016 (341) ELT 420 (Tri.-Del.)** with regard to withdrawal of protest.

10. Heard both sides and perused the records.

11. We find that the appellant has paid duty on Bagasse through debit in their cenvat credit ledger 05.02.2011 under protest and thereafter on 20.07.2011 the appellant has withdrawn the protest. We

find that the impugned order has held that, since in this case the refund application was made beyond one year from the date of payment/reversal of credit as well as from the date of withdrawal of the protest, hence provisions of Section 11 B of the Central Excise Act, 1944 with respect to refund are applicable, We find in this case the item Bagasse is neither a dutiable goods/item nor a manufactured goods/item but is only a waste generated in the process of manufacture of sugar as held by the Hon'ble Supreme Court. Therefore bagasse is not a dutiable goods/item and payment of duty on bagasse by the appellant tantamount to payment/collection of duty without authority of law. In this regard the appellant has relied on catena of cases, cited supra. Further the case law relied by the learned Authorised Representative (AR) for the Revenue is with regard to withdrawal of the protest in the case of customs, where the issue is not with regard to the duty on the imported goods. We find in this case the goods/item 'bagasse' is not dutiable and therefore in our opinion demand/ payment of duty by the appellant is without authority of law and therefore the amount paid by the appellant cannot be considered as duty and hence the provisions of Section 11 B of the Central Excise Act, 1944 would not be applicable.

12. In view of the above discussion we find that the impugned order rejecting the refund claim is not sustainable and liable to be set aside. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in open court on 13.03.2025)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar