CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

Regional Bench - Court No. 2

Central Excise Appeal No. 23870 of 2014

(Arising out of Order-in-Appeal No. MYS-EXCUS-000-DIV3-APP-HAB-090-2014 dated 17..09.2014 passed by the Commissioner of Central Excise (Appeals), Mysore)

Bannari Amman Sugars
Alaganchi Village, Nanjangud Tq,
Mysore, Karnataka - 570011. ....**Appellant**

VERSUS

Commissioner of Central Tax,
S1, S2, Vinaya Marga, Siddhartha Nagar, Mysore,
Karantaka – 570 011 ....**Respondent**

APPEARANCE:
Mr. J. Shankaraman, Advocate for the Appellant.
Mr. Sanjay Venkat, Authorised Representative (AR) for the Respondent.

CORAM:

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

FINAL ORDER NO. 21776 /2024

Date of Hearing: 13.12.2024
Date of Decision: 13.12.2024

PER: P.A. AUGUSTIAN

The issue in the present appeal is regarding claim of refund of central excise duty paid on molasses under protest under section 11B of Central Excise Act, 1944. The period involved in the present appeal is from April 2012 to March 2013.

2. Briefly stated the facts are the Appellant is engaged in manufacture of sugar, molasses, ethyl alcohol, fusel oil falling under different chapter heading and also manufacturing non excisable

commodities i.e., rectified spirit and neutral spirit. Alleging that the appellant had captively consumed molasses for manufacturing of both excisable goods and non-excisable products and is not eligible for the benefit of Notification No. 67/95-CE dated 16.03.1995, duty was demanded and the appellant paid the duty under protest and thereafter, appellant filed a refund claim on 01.08.2013. On receipt of the refund application, a show cause notice was issued on the grounds *inter alia* that appellant is not eligible for the benefit of Notification No. 67/95-CE dated 16.03.1995. The Adjudication Authority vide order dated 31.10 2013 rejected the refund claim. Aggrieved by said order, an appeal was filed before Commissioner (Appeals) and Commissioner (Appeals) as per impugned order dated 17.09.2014 rejected the appeal. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, learned counsel for the appellant submits that the issue is no more *res-integra* and settled by this Tribunal in appellant's own case for the period from April 2008 to March 2010 in Appeal No. 623/2012 vide Final Order No. 20701/2024 dated 30.08.2024. This Tribunal while allowing the appeal on the very same facts of the case held that;

> *"7. We find that the issue has already been considered by this Tribunal in their own case 2018 (362) ELT 705 (Tri.-Bang.) and vide Final Order No.21148/2019 dated 27.11.2019. Also taking note of the various aspects on the issue and precedent judgments and analysing the submissions made by both sides, recently this Tribunal in the case of NSL Sugars Ltd. vs. CCE, Mysore vide Final Order No.20663/2024 dated 20.08.2024 following the judgment rendered in the case of Godavari Sugar Mills Ltd.: 2007 (212) ELT 234 (Tri. Bang) has held as follows:*
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> > *"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 he 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."

4. Learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order.

5. Heard both sides and perused the records.

6. In view of the above, following the ratio of the above decisions of the Tribunal, we find that the impugned order is liable to be set aside.

7. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any, in accordance with law.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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