# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH - COURT NO. 1

## Central Excise Appeal No. 21431 of 2016

[Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-004-16-17 dated 28.06.2016 passed by the Commissioner of Central Excise (Appeals), Mysore]

**Commissioner of Central Excise Mysore**
S1-S2, Vinaya Marga
Siddhartha Nagar
Mysore - 570 011. ........**Appellant(s)**

**VERSUS**

**NSL Sugars Ltd.**
Koppa Maddur Taluk
No. 51, Flat No. 201
2nd Floor, Mamta Manor Apartments
Haines Road
Mandya – 571 425 **.......Respondent(s)**

**WITH**

1. **Central Excise Appeal No. 21433 of 2016 (Commissioner of Central Excise, Mysore Vs. NSL Sugars Ltd.)**
2. **Central Excise Appeal No. 21435 of 2016 (Commissioner of Central Excise, Mysore Vs. NSL Sugars Ltd.)**
3. **Central Excise Appeal No. 21439 of 2016 (Commissioner of Central Excise, Mysore Vs. NSL Sugars Ltd.)**
4. **Central Excise Appeal No. 21440 of 2016 (Commissioner of Central Excise, Mysore Vs. NSL Sugars Ltd.)**

[Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-004-16-17 dated 28.06.2016 passed by the Commissioner of Central Excise (Appeals), Mysore]

**APPEARANCE:**
Mr. B. Venugopal, Advocate for the Appellant
Ms Money Jain, Joint Commissioner (AR) for the Respondent

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

**Final Order Nos. 21721 - 21725 /2025**

Date of Hearing: 28.08.2025
Date of Decision: 28.08.2025

**Per: Pullela Nageswara Rao**

These 5(five) Appeals are filed against common Order-in-Appeal No. MYS-EXCUS-000-APP-004-16-17 dated 28.06.2016 passed by the Commissioner of Central Excise (Appeals), Mysore against the 5(five) respective Orders-in-Original, the details of which are as under;

| Appeal No. | Show Cause Notice Date | Period | Order-in-Original | Refund Amount (Amt. Rs.) |
|---|---|---|---|---|
| E/21439/ 2016 | 31.10.2014 | April 2009 to March 2010 | 38(R)/2014-15 dtd. 14.11.2014 | 2,47,20,000 |
| E/21435/ 2016 | 31.10.2014 | April 2010 to and March 2011 | 39(R)/2014-15 dtd. 14.11.2014 | 2,51,06,250 |
| E/21433/ 2016 | 31.10.2014 | April 2011 to March 2012 | 40(R)/2014-15 dtd. 14.11.2014 | 2,97,41,250 |
| E/21431/ 2016 | 31.10.2014 | April 2012 to March 2013 | 41(R)/2014-15 dtd.14.11.2014 | 3,36,03,750 |
| E/21440/ 2016 | 17.10.2014 | April 2013 to March 2014 | 37(R)/2014-15 dtd.10.11.2014 | 2,78,10,000 |

2. The issue in the present appeals is regarding eligibility of exemption under Notification No. 67/95-CE for captively consumed 'molasses' used in the manufacture of exempted rectified spirit.

3. The brief facts are the appellant is a manufacturer of excisable goods falling under Chapter 17 of the first schedule to the Central Excise Tariff Act, 1985. During the course of manufacture of sugar, molasses emerges as a by-product which is used in the manufacture of 'Rectified Spirit' and 'Neutral Alcohol'. The appellant filed 5(five) refund claims on the ground that due to mistake they had paid duty on clearances of 'molasses' used captively within the factory for either manufacture of dutiable or exempted goods and they have complied with the provisions of Rule 6 of the Cenvat Credit Rules, 2004 and hence in terms of Notification No 67/1995-CE dated 16.3.1995 they are entitled to the benefit of the exemption notification and not liable to pay duty on molasses being captively consumed. The appellant had paid the duty on molasses 'under protest' and later they claimed the refund of the duty paid on molasses stating that they are eligible for the benefit of Notification No 67/1995-CE on intermediate product molasses used in the manufacture of rectified spirit and other products.

4. The Respondent was issued with 5(five) show cause notices in response to refund claims filed, proposing to reject the refund claims on the grounds that; the exemption under Notification No. 67/95-CE dated 16.3.1995 as amended shall not apply to inputs used in or in relation to the manufacture of final products, which are exempt from whole of duty of excise or chargeable to Nil rate of duty; therefore, the molasses manufactured by the assessee and consumed in the distillery unit in the manufacture of rectified spirit and neutral alcohol, which are exempt from duty and/or non-excisable is not eligible for benefit under the said notification;

5. The 5(five) show cause notices (SCNs) were adjudicated by the Adjudicating Authority vide the respective Orders-in-Original and the refund claims were rejected on the grounds that; Molasses is captively consumed in the manufacture of rectified spirit / neutral alcohol, since rectified spirit / neutral alcohol are chargeable to NIL rate of duty under CETA, 1985 read with the relevant notifications, the benefit under Notification No. 67/95-CE is not available; the

assessee has not intimated the availment of the option in time and also not followed the procedure as prescribed under Rule 6(3A) of Cenvat Credit Rules, 2004 (CCR, 2004) and thus have not complied with the provisions of Rule 6 of CCR in terms of clause (vi) of Notification No. 67/95-CE and therefore not entitled to the benefit of the said notification.

6. Aggrieved by the Orders-in-Original, appeals were filed and Commissioner (Appeals) set aside the Orders-in-Original vide common Order-in-Appeal No. MYS-EXCUS-000-APP-004-16-17 dated 28.06.2016 and held; as regards the issue of eligibility of exemption for molasses under Notification No. 67/95-CE, used in the manufacture of exempted rectified spirit it was held that the said issue is squarely covered by the decision of the Hon'ble Tribunal in the case of Sakthi Sugar Ltd. Vs. CCE, Salem 2008 (230) ELT 676 (Tri.-Chennai) which was upheld by Apex Court as reported in CCE, Salem vs. Sakthi Sugar Ltd. 2016 (332) ELT A194 (SC) and Godavari Sugar Mills vs. CCE, Belgaum 2007 (212) ELT 234 (Tri.-Bang) and therefore the assessee is entitled to the benefit of Notification No. 67/95-CE; as regards the issue of compliance under Rule 6, it was held that the assessee was paying the duty on molasses cleared for captive consumption 'under protest' and was also simultaneously reversing the Cenvat credit attributable to such molasses, the details of which were duly declared in ER-1 Returns filed during the relevant period and also regular monthly reversals were declared in the monthly return under sub-rule (5) of Rule 9A of CCR, 2004, which fact is not disputed by the Department. Thus, the primarily requirement of Rule 6(3A) of Cenvat Credit Rules, 2004 i.e., reversal of proportionate Cenvat credit availed on input and input services used in the manufacture of exempted goods, is satisfied; and the case was remanded back to the refund sanctioning authority to examine the refund claim as per the provisions of section 11B of the Central Excise Act, 1944. Aggrieved by said order, Revenue filed these 5(five) appeals.

7. Learned Authorised Representative (AR) for the Revenue during the hearing submits that 'Rectified Spirit' and 'Neutral alcohol produced by the assessee do not get covered in column (2) of the Notification No. 67/95-CE dated 16.03.1995 as they do not find place in the First Schedule to the Central Excise Tariff Act, 1985. Hence, the benefit of Notification No. 67/95-CE dated 16.03.1995 is not available to "Molasses", which is used in the manufacture of "Rectified spirit" and "Neutral Alcohol". Learned AR further submits that this Tribunal, while disposing a stay application in the case of ***Venkateshwara Winery & Distillery Ltd. Vs. CCE, Hyderabad - 2013 (295) E.L.T. 306 (Tri. Bang.)*** examined the entries in the Central Excise Tariff and made an observation that the appellant's claim that rectified spirit is non-excisable and only denatured ethyl alcohol can be considered excisable has considerable force. When the goods produced are not figuring in column (2) of the Table to Notification No. 67/95-CE, the question of examining the condition No. (vi) of the Notification (i.e, whether, the assessee has fulfilled the obligation under Rule 6 of CCR, 2004) does not arise. This aspect was not taken into consideration by the Commissioner (Appeals) while setting aside the Orders-in-Original. Learned AR further submits that as per the amendment to Cenvat Credit Rules, 2004 vide Notification No. 6/2015-CE(NT) dated 01.03.2015, an Explanation-1 was inserted in Rule 6(1) which states that 'for the purpose of this rule, exempted goods or final products as defined in clauses (d) and (h) of Rule 2 shall include non-excisable goods cleared for a consideration from the factory. It is clear from this amended provision that restrictions specified in Rule 6 of Cenvat Credit Rules, 2004 for the purpose of availing cenvat credit in respect of inputs and input services used in the manufacture of exempted goods is applicable to non-excisable goods also. Whereas, this provision cannot be made applicable to the exemption Notification No. 67/95-CE for the purpose of availing benefit even for non-excisable goods which do not find place in the Central Excise Tariff Act, 1985. The amendment carried out to Cenvat Credit Rules, 2004 by considering non-excisable goods as exempted

goods will not alter the situation as the basic condition of the Notification No. 67/95-CE is that inputs should be used in the manufacture of final products falling under the first schedule to the Central Excise Tariff Act, 1985 remains same. The Commissioner (A) appears to have failed to take note of this provision and thus erred in extending the benefit of Notification No. 67/95-CE which is against the law.

8. Learned Counsel for the Respondent during the hearing submits that as far as eligibility of benefit under Notification No. 67/95-CE is concerned the process of manufacture of sugar is a continuous process during which the 'molasses' emerges and is removed to the Appellant's own distillery for further fermentation and distillation process, which result in emergence of 'Ethyl Alcohol' or Neutral Alcohol', which is also known as Rectified Spirit', is excisable goods classifiable under Central Excise Tariff Heading (CETH) 22072000 and thus finds specific mention in the CETA, 1985 after its amendment in 2005 (when it was made into 8 digits). It is therefore grossly incorrect to say that the 'Neutral Alcohol or Rectified Sipirt' do not find a mention in CETA, 1985. He further submitted that on identical set of facts, the Hon'ble Tribunal in the case of ***Manakpur Chini Mills Ltd. v. CCE – [ 2017 (6) GSTL 188(T)],*** 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 placed 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 spirt 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."*

9. Further learned counsel placed reliance on 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 ***Manakpur Chini Mills*** *supra,* it was held that*:*

> *"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). The findings recorded in para 6 of the Tribunal's decision is reproduced herein below:*
>
> > *"6.........*
> >
> > *7. By following the above decision, we set aside the impugned order and allow the appeal filed by the appellant."*

10. The learned counsel submits that decision of the Hon'ble Tribunal in the case of ***Bannari Amman Sugars Ltd.,*** *supra* ***[Civil Appeal No. 9088/2018]*** has been affirmed by the Hon'ble Supreme court in the case of ***Commr.*** of ***Cus.,*** **C.Ex & ST., Vs.** ***Dharani Sugars & Chemicals Ltd. - 2022 (379) ELT 556 (SC).***

11. Learned counsel for the respondent further submitted that the issues raised in the present Department's Appeals were negated by this Tribunal against the Revenue in the case of Sri Chamundeswari sugars Ltd. in the following Final Orders:

(i) Final Order Nos. 20879-20886/2023 dated 25.08.2023

(ii) Final Order No. 20663/2024 dated 20.08.2024

(iii) Final order Nos. 20334-20335/2025 dated 19.03.2025

12. On the issue of compliance of provisions of Rule 6 of Cenvat Credit Rules, 2004 is concerned, learned counsel submits that the Commissioner (Appeals) has given clear findings on the compliance

under Rule 6 of Cenvat Credit Rules, 2004 in paras 11 and 12 of Order-in-Appeal, which was not disputed by the jurisdictional Range Office and thus non-compliance of Rule 6 is clearly a non-issue as it is opposed to facts on record.

13. Heard both sides and perused the records.

14. We find that the issue is no more *res integra* and squarely covered by the decision of this Tribunal in appellant's own case in Appeal No. E/27009/2013 vide Final Order Nos. 20879-20886/2023, wherein it is held that:-

> *"9. We have gone through the submissions made by both the sides and on perusal of the case laws, since the issue is squarely covered by the Final Order of Tribunal in the case of Manakpur Chini Mills Ltd. Vs. CCE-2017 (6) GSTL 188 (T) and Bannari Amman Sugars Ltd. Vs. Commr. Of Cus., C.Ex & ST. Mysore reported in 2018 (362) ELT 705 (Tri.-Bang), which was affirmed by the Hon'ble Apex Court in the case of Commr. of C. Ex. & Service Tax Vs. Dharani Sugars & Chemicals Ltd reported in 2022 (379) E.L.T. 556 (S.C.), the appeals are allowed with consequential relief, if any, as per law"*

15. In view of the above discussion and following the decisions in the cases cited, supra, we find that the impugned order is sustainable and has to be upheld.

16. Accordingly, the impugned order is upheld and the 5(five) appeals filed by the Revenue are dismissed.

*(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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