

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

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 20393 of 2017

(Arising out of Order-in-Original No. BEL/EXCUS/000/COM/BKK/048/16-17(CX) dated 16.01.2017 passed by the Commissioner of Central Excise and Customs, Belgaum)

Godavari Biorefineries Ltd

Sameerwad Tal Mudhol,
Bagalkot, Karnataka - 587316

.....Appellant

VERSUS

Commissioner of Central Excise, Belgaum

No. 71, Club Road, Central Excise Building,
Belgaum, Karnataka - 590001

.....Respondent

WITH

Excise Appeal No. 22017 of 2018

(Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-MS-292 TO 293-2018-19 dated 25.10.2018 passed by the Commissioner of Central Excise (Appeals), Belgaum)

Shivshakti Sugars Ltd

Sy No. 06 95-99, Soundatti Village, Tal
Raibag Dist, Belgaum, Karnataka - 591213

.....Appellant

VERSUS

Commissioner of Central Excise, Belgaum

No. 71, Club Road, Central Excise Building,
Belgaum, Karnataka - 590001

.....Respondent

Appearance:

Mr. J. N. Somaiya, Advocate for the Appellant
Mr. M. A. Jithendra, Authorised Representative (AR) for the Revenue

Coram:

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

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

Final Order No. 21995-21996 /2025

Date of Hearing: 11.09.2025

Date of Decision: 10.12.2025

Per: P. A. Augustian

These 2(two) appeals are filed against Order-in-Original No.BEL/EXCUS/000/COM/BKK/048/16-17(CX) dated 16.01.2017 passed by the Commissioner of Central Excise and Customs, Belgaum and Order-in-Appeal No. BEL-EXCUS-000-APP-MS-292 TO 293-2018-19 dated 25.10.2018 passed by the Commissioner of Central Excise (Appeals), Belgaum.

2. The issue in the present appeals is whether the demand under Rule 6(3)(i) of CENVAT Credit Rules, 2004 based on 6% value of the electricity sold/generated using the by-products / waste products, Bagasse is tenable.

3. The brief facts are the Appellant is manufacturing sugar cane and molasses and availed credit of duty paid on inputs, capital goods and service tax as per CENVAT Credit Rules, 2004 and was filing periodical returns as required. During the scrutiny of the ER-1 returns for the period from March 2015 to December 2015, it is observed that Appellant had taken credit on inputs like water treatment chemicals, lubricating oils and inputs services like GTA, security services, etc., which are commonly used in manufacture of dutiable final product i.e., sugar and molasses and also in relation to generation of electricity which is a non-excisable product. Since part of electricity generated was used captively in the sugar factory and the remaining portion was sold outside to power distribution agency for a consideration, it is alleged that the CENVAT credit involved in inputs and input services related to that quantity of electricity sold to outside agencies is not eligible to the Appellant. Accordingly show cause notice was issued for the period and Adjudication authority as per the order dated 16.01.2017 confirmed recovery of the amount as alleged equal to 6% on the total value of electricity sold to outside agencies and also imposed penalty. Aggrieved by the said order, Appeal No. E/20393/2017 was filed. Similarly in the matter of Appellant, M/s Shiva Shakti Sugars, similar demand was

made for the period from January 2016 to March 2016 on the same ground and Adjudication authority as per order dated 04.04.2018 confirmed the demand. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the order dated 31.10.2018 rejected the appeal filed by the Appellant. Aggrieved by said order, Appeal No. E/22017/2018 was filed. Since the issue involved in both the appeals is similar, both appeals are together taken up for hearing and disposal.

4. When the appeals came up for hearing, the Learned Counsel for the Appellant submits that the issue is squarely covered by the **Final Order No. 20388-20401/2024 dated 18.03.2024** of this Tribunal in the matter of **M/s Ugar Sugar Works and others**, wherein it is held that;

"7. The short issue involved in the present appeals are consideration is, whether 6% of the value of the electricity sold, generated out of by-product / waste product viz. bagasse be subjected to demand under Rule 6(3)(i) of the CENVAT Credit Rules, 2004. This Tribunal in the case of Shree Doodhganga Krishna Sahakari Sakkare Karkhane Niyamit (supra) has considered the issue and taking note of the judgment of the Hon'ble Supreme Court in the case of UOI Vs. DSCL Sugars Ltd. (supra) and the Board's Circular No.1084/05/2022-CX dt. 07/07/2022, held that demand of 6% of the value of electricity sold cannot be sustained. Following the aforesaid order of this Tribunal and also the judgment of the jurisdictional High Court in Shamnur Sugars Limited's case (supra), the impugned orders are set aside and the appeals are allowed with consequential relief to the appellants, if any, as per law."

5. Further, the Learned Counsel relied on the following decisions;

- a. **Gularia Chini Mills Vs. UOI, 2014 (34) STR-175(HC-All.) (affirmed by Hon'ble Supreme Court in the case of UOI Vs. DSCL Sugar Ltd., 2015 (322) ELT-769)**

- b. **Shamnur Sugars Ltd. Vs. CCE, 2023 (6) TMI-459(HC-Kar.)**
- c. **CCE Vs. Himadri Specialty Chem. P. Ltd., 2022 (7) TMI- 1177(HC-Cal.)**
- d. **CCE Vs. Nangalmal Sugar Complex, 2022(8) TMI-1151**
- e. **Jakraya Sugar Ltd. Vs. CCE, 2021 (8) TMI-685**
- f. **Trimula Industries Ltd. Vs. CCE, 2019 (4) TMI-2119**
- g. **Jakraya Sugar Ltd. Vs. CCE, 2018 (5) TMI-1665**
- h. **Dyanyogi Shri Shivkumar Swamiji Sugars Ltd. V/s.CCE, 2019(11) TMI-433**
- i. **Rayatar Sahkari Sakkare Vs. CCE, 2019(8) TMI-418**
- j. **Venkateshwara Power Projects Ltd. Vs. CCE, 2019(4) TMI-643**
- k. **CCE Vs. Venkateshwara Power Projects Ltd., 2019(4) TMI-642**
- l. **Shivratna Udyog Ltd. Vs. CCE, 2018 (11) TMI-1513**
- m. **Venkateshwara Power Projects Ltd. Vs. CCE, 2018 (11) TMI-913**

6. The Learned Counsel also submits that in the absence of common usage of inputs or inputs services, the provisions of Rule 6 of Cenvat Credit Rules, 2004 cannot be invoked. In this regard, the Learned Counsel relied on the decisions of **Ganga Kishan Sahakari Chini Mills Ltd. Vs. CCE, 2017 (346) ELT-450** and **MIRC Electronics Ltd. Vs. CCE, 2015 (38) STR-199**.

7. As regards confirming the demand on 6% of the amount under Rule 6(3)(i) of Cenvat Credit Rules, 2004, Learned Counsel submits that even if it is impossible to maintain records of common inputs/input services, the Department *suo moto* invoked the provisions of said Rule to confirm demand on the 6% amount and such method of confirming duty is unsustainable. In this regard he relied on the following decisions **CCE Vs. M/s. Maa Mangala Ispat Pvt Ltd. – 2017(49) STR 503** and **CCE Vs. M/s. Goyal Proteins Ltd. – 2015 (325) ELT 165**. The Learned Counsel further submits that even if the Appellant had failed to maintain proper records, an option is available for the Appellant to

reverse proportionate credit. In this regard, the Learned Counsel relied on the decision in the matter of **M/s. Mercedes Benz India Pvt Ltd. Vs. CCE – 20156 (40) STR 381 and JB Mangharam Foods Pvt Ltd. Vs. CCE – 2010 (258) ELT 575.**

8. The Learned Authorised Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that the Adjudication authority has considered the entire issue and as per the information furnished by the Appellant. They have sold excess power generated after captive consumption and since electricity is not excisable, appellant is not entitled to credit. Further submits that since appellant has not opted for maintenance of separate account for dutiable goods, sugar and molasses and exempted/non-excisable goods electricity, the Appellant is liable to pay the demand as confirmed by the Adjudication authority under Rule 6 (3)(i) of Cenvat Credit Rules, 2004.

9. Heard both sides and perused the records.

10. We find that the issue is squarely covered by the **Final Order No. 20388-20401/2024 dated 18.03.2024** of this Tribunal in the matter of **M/s. Ugar Sugar Works and others in** Appeal No. E/21645/2018 and considering the same the impugned order is unsustainable.

11. Thus, the appeals are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in Open Court on 10.12.2025)

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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