

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal(s) Involved:

E/20986/2018; E/20988/2018; E/20453/2018 & E/20820/2018

(Arising out of:

- (i) Order-in-Appeal No.BEL-EXCUS-000-APP-MS-064 TO 073-2017-18 dated 22.12.2017;
- (ii) Order-in-Appeal No.BEL-EXCUS-000-APP-MS-052 TO 053-2017-18 dated 22.12.2017; and
- (iii) Order-in-Appeal No.BEL-EXCUS-000-APP-MS-322-2017-18 dated 22.03.2018.

All OIAs are passed by the Commissioner of Central Tax (Appeals), Belgaum.)

**M/s. Venkateshwara Power
Projects Ltd.**

Bedkihal, Tal. Chikkodi,
Dist. Belgaum.

M/s. The Ugar Sugar Works Ltd.

Ugar Khurd, Tal. Athani,
Dist. Belgaum.

M/s. EID Parry (India) Ltd.

(earlier known as M/s. Parrys Sugar
Industries Ltd.)
Khanpeth, Ramdurg Dist.
Belgaum – 591 114.

Appellant(s)

**M/s. Sri Srivsgar Sugar & Agro
Products Ltd.**

R.S. No.177/11, A/P. Udupudi,
Salahalli, Tal. Ramdurga
Dist. Belgavi – 591 130.

Versus

**Commissioner of Central Goods &
Service Tax,**

No.71, Club Road,

Respondent(s)

Belgaum – 590 001.

Appearance:

Mr. V.B. Gaikwad, Advocate
328, E-Ward, D-10, Royal Plaza,
Dabholkar Corner, Kolhapur – 416 001.

For the Appellants

Mr. M. A. Nyalkalkar, Advocate

Mr. K. B. Nanaiah,
Asst. Commissioner (AR)

For the Respondent

Mr. K. Murali, Superintendent (AR)

Date of Hearing: 01/11/2018

Date of Decision: 13/11/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No: 21723 – 21726 / 2018

Per : S.S GARG

These four appeals have been filed against the impugned order dated 22.12.2017 and 22.3.2018 wherein the Commissioner (A) has rejected the appeals of the appellants. Since the issue involved in all the four appeals is identical, therefore, all the four appeals are being disposed of by this common order.

2. For the sake of convenience, the facts of M/s. Venkateshwara Chinni Mills (Appeal No. E/20986/2018) are taken.

2.1 Briefly the facts of the present case are that the appellants are engaged in manufacture of sugar and molasses falling under Chapter 17 of Central Excise Tariff Act, 1985. They are also having cogeneration plant where they are generating electricity. The electricity so generated is consumed within the factory by them in or in relation to the manufacture of their final product i.e., sugar and only the remaining portion of the electricity after their captive consumption is sold to outside agency for a consideration. Appellants were issued show-cause notice dated 31.3.2016 demanding an amount of Rs.55,65,810/- i.e. equal to 6% of the sale value of the electricity sold during the period from March 2015 to December 2015 under Rule 14 of CENVAT Credit Rules, 2004 read with Section 11A(1)(a) of Central Excise Act, 1944 along with interest and penalty is also proposed under Section 11AC. After following the due process, the Joint Commissioner vide Order-in-Original dated 28.2.2017 confirmed the demand for an amount of Rs.55,65,810/- under Section 11A(1) of Central Excise Act, 1944 read with Rule 14 of the CENVAT Credit Rules, 2004 and imposed penalty of Rs.5,56,581/- under Rule 15(1) of the CENVAT Credit Rules and has also ordered for recovery of interest under Section 11AB of

Central Excise Act. Being aggrieved by the said order, the appellant filed appeal before the Commissioner (A) and the Commissioner (A) has rejected the appeal vide the impugned orders. Hence, the present appeals.

3. Heard both the parties and perused the records.

4. Learned counsel appearing for the appellants submitted that the impugned order is not sustainable in law as the same is contrary to the statutory provision as well as contrary to the binding judicial precedents decided by the Tribunal and the High Court on this very issue. He further submitted that the Commissioner (A) has relied upon the Explanation-I inserted in Rule 6(1) wherein it is provided that electricity generated by the appellant fall under the term 'non-excisable' goods and hence, the amended provisions of Rule 6 of CENVAT Credit Rules (CCR), 2004 are applicable to electricity sold by the appellant w.e.f 1.3.2015 and consequently, the appellants were liable to pay an amount equal to 6% of the value of electricity sold by them during the material period of dispute in terms of provisions of Rule 6(3)(i) of CCR, 2004. Consequently, the Revenue has demanded 6% of the amount of the value of electricity sold to other companies. He further submitted that Revenue in the show-

cause notice has merely alleged that the appellant has used common input or input services like water treatment chemicals, lubricating oil and GTA, security, manpower supply, maintenance and repair, telephone, courier, Chartered Accountant, insurance service, have been used commonly in the manufacture of dutiable final product and non-excisable electricity. But no justification, evidence or reasoning is provided in support of this bald allegation given in the show-cause notice itself. He further submitted that in the absence of any material evidence to show that the appellants have used common inputs or input services in the generation of electricity, then there is no question of application of provisions of Rule 6(2)/6(3) of CCR, 2004. He further submitted that even the amended provisions of Rule 6 will apply only when it is proved beyond doubt that the assessee has manufactured the dutiable as well as non-excisable / exempted goods by using common CEVAT credit availed on inputs and input services. Whereas in the present case, there is absolutely no evidence adduced to prove the use of common inputs or input services used in or in relation to the manufacture of dutiable goods and non-excisable electricity. Hence, the confirmation of demand for an amount of 6% of value of electricity is not tenable in law. He further submitted that this issue is no more *res integra*

and has been settled by various decisions of the Tribunal and the Courts. He relied upon the following decisions:

- *Jakarya Sugars Ltd. vs. CCE: 2018 (5) TMI 1665 (Tri.-Mum.)*
- *Gularia Chini Mills vs. UOI: 2014 (34) STR 175 (HC-All.)*

4.1 He further submitted that in the case of ***Gularia Chini Mills*** cited supra, the Department itself has clearly admitted before the High Court that except the bagasse no other input or input service is used for generation of electricity and the said decision of ***Gularia Chini Mills*** has been upheld by the Hon'ble Supreme Court in the case of ***DSCL Sugars Ltd.*** reported in ***2015 (322) ELT 769 (SC)***. He further submitted that the process of generation of electricity by using the bagasse consumed in all the sugar factories in India and once the Department has admitted in the ***Gularia Chini Mills*** that no input or input service except bagasse are used in generation of electricity, then the stand taken by the Revenue in the present appeals is not tenable in law. He further submitted that the amended Rule 6 which is effective from 1.3.2015 is not applicable to bagasse. For this submission, he relied upon the following decisions:

- *Simbhaoli Sugar Ltd. vs. CCE: 2018 (8) TMI 160*
- *Triveni Engineering & Industries Ltd. vs. CCE: 2018 (8) TMI 6*

- *Final Order No. A/89563-89568/17/SMB dt. 4.8.2017 passed by CESTAT, WZB, Mumbai in the case of M/s. Shivrtna Udyog Ltd. & Ors.*
- *Final Order No. A/90456-90464/17/SMB dt. 27.10.2017 passed by CESTAT, WZB, Mumbai in the case of M/s. Athani Sugars Ltd. & Others.*

4.2 Further, he relied upon the decision of ***Ganga Kishan Sahakari Chini Mills Ltd. vs. CCE: 2017 (346) ELT 450*** wherein it has been held that in the absence of evidence about the common inputs/input services, the provision of Rule 6 of CCR, 2004 are not applicable. He also submitted that when it is impossible to maintain common inputs/input services, then the Department cannot demand 6% amount under Rule 6(3)(1) of CCR, 2004. For this submission, he relied upon the following decisions:

- *CCE vs. Maa Mangala Ispat Pvt. Ltd.: 2017 (49) STR 593.*
- *CCE vs. Goyal Proteins Ltd.: 2015 (325) ELT 165*
- *Narmada Gelatins Ltd. vs. CCE: 2009 (233) ELT 332*

4.3 Further, he submits that the department cannot force the option to pay 6% amount when the assessee has the option to reverse the proportionate credit. For this, he relied upon the following decisions:

- *Cranes & Structural Engineers vs. CCE: 2017 (347) ELT 112*

- *Aster Pvt. Ltd. vs. CCE: 2016 (43) STR 411*
- *Swaraj Automotive vs. CCE: 2018 (9) TMI 982*
- *Furnace & Foundry Equipment Co. vs. CCE: 2018 (2) TMI 1011*
- *Rajdeep Plastics Containers (I) Pvt. Ltd. vs. CCE: 2017 (11) TMI 338*

5. On the other hand, the learned AR defended the impugned order and submitted that as per the decision of the Mumbai Tribunal in the case of ***Sharad S.S.K. Ltd. vs. CCE, Kolhapur: 2017 (49) STR 506 (Tri.-Mum.)*** wherein the Tribunal has held that the appellants are liable to reverse the credit, if any, taken on inputs/input services which have been used in the generation of electricity which have been sold to MSEB.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the issue involved in the present appeals is no more *res integra* and has been settled by the decision of the Allahabad High Court in the case of ***Gularia Chini Mills*** cited supra which has been approved by the Hon'ble Supreme Court in the case of ***UOI vs. M/s. DSCL Sugar Ltd.*** cited supra. Further, the Division Bench of the

Tribunal in the case of **Jakarya Sugars Ltd.** cited supra has also considered the same issue and after relying upon the judgment of the Allahabad High Court in the case of **Gularia Chini Mills** has held that in the generation of electricity from bagasse, no other input or input service is used and therefore, the electrical energy is neither excisable under Section 2(d) of Central Excise Act, 1944 nor exempted goods and hence, Rule 6 is not applicable.

6.1 By following the ratios of the above said decisions, I am of the considered view that the demand of 6% of the value of electricity sold to various companies is not sustainable in law and therefore, I set aside the demand by allowing three appeals (E/20986/2018; E/20988/2018; E/20453/2018).

6.2 As far as appeal No. E/20820/2018 is concerned, the learned counsel for the appellant has also relied upon the same decisions which have been relied in the other appeals. Further, in this case, the learned counsel has contested the demand of 6% but he has also reverved proportionate credit amounting to Rs.20,650/- along with interest in order to settle the issue and is not claiming the refund of the same. Therefore, in this appeal, I

hold that he has complied with the requirement of law by reversing the proportionate credit.

7. In view of my above discussions, I set aside the impugned orders by allowing the appeals of the appellant with consequential relief, if any.

(Order was pronounced in Open Court on **13.11.2018.**)

S.S GARG
JUDICIAL MEMBER

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