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

Appeal(s) Involved:

E/20434/2018-SM, E/20435/2018, E/20552/2018, E/20660 - 20662/2018

[Arising out of:

(i) Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-075-2017-18 dated 08.01.2018 passed by Commissioner of Central Tax (Appeals), BELGAUM.

(ii) Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-076-2017-18 dated 08.01.2018 passed by Commissioner of Central Tax (Appeals), BELGAUM.

(iii) Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-095-2017-18 dated 16.01.2018 passed by Commissioner of Central Tax (Appeals), BELGAUM.

(iv) Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-055, 056, 057-2017-18 dated 05.01.2018 passed by Commissioner of Central Tax (Appeals), BELGAUM.]

M/s. India Cane Power Ltd.
Uttur Village, (Mudhol to Yadawad Road)
Taluk Mudhol Dist
BAGALKOT - 587 313.
KARNATAKA

M/s. Gem Sugars Limited
Kundargi Village,
Taluk: Bilagi
District : Bagalkot- 587 204.

M/s. Naranja Sahakari Karkhane Ltd.
Imampur Village,
Near Janwada,
Bidar – 585 401.

Appellant(s)

The Krishna Sahakari Sakkare Kharkhane Niyamit
Post: Sankonatti,
Taluk: Athani
District: Belgaum

M/s. Dyanyogi Shri Shivkumar Swamji Sugars Ltd.
Hirebevanoor,
Taluk: Indi
District: Bijapur.

M/s. Bilagi Sugar Mill Ltd.
Badagandi,
Taluk: Bilagi.
District: Bagalkot

Versus

The Commissioner Of Central Tax and Central Excise,
No.71, Club Road,
Belgaum – 590 001.
Karnataka

Respondent(s)

Appearance:

Mr. M. S. Bidarkoti &
Mr. RAGHAVENDRA B HANJER,
Advocates (E/20434-20435/2018)
No.36, FLAT 202,
SIRI SQUARE APARTMENTS
CHIKKALASANDRA MAIN ROAD
NEAR GANESH TEMPLE, CHIKKALASANDRA
BNAGALORE – 560 061.
KARNATAKA

Written Submissions
(E/20052/2018)
Mr. PRADYUMNA G.H. ADVOCATE
NO.371, 8^{TH} MAIN
SADASHIV NAGAR
Bangalore – 560 080.
Karnataka

For the Appellants

None (E/20660 - 20662/2018)
CS. Sudheendra P. Ghali
Practicing Company Secretary
102, Hari Apartments,
College Road,
Belgaum – 590 001.

Mr. K. T. Pakshirajan,
Asst. Commissioner (AR)

Mr. Kanipakam Murali,
Superintendent (AR)

For the Respondents

Date of Hearing: 29/01/2019
Date of Decision: 31/01/2019

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 20122 - 20127 / 2019

Per : S.S GARG

Appellants have filed these six appeals against various impugned order passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellants. Since the issue involved in all the six appeals is identical, therefore, all the six appeals are being disposed of by this common order.

2. For the sake of convenience, the facts of appeal No. E/20434/2018 are taken.

2.1 Appellant is engaged in the manufacture and clearance of sugar and molasses on payment of Central Excise duty falling under Chapter 17 of the Schedule to the Central Excise Tariff Act (CETA), 1985. They are availing CENVAT credit under CENVAT Credit Rules, 2004. They are also engaged in the manufacture of electricity, which is used captively for manufacture of excisable goods and the excess/surplus quantity of electricity is sold to outside power agencies for a consideration without payment of duty, as no rate of duty has been prescribed in the CETA, 1985. Therefore, CENVAT credit involved input and input services related to that quantity of electricity sold to outside agencies is not eligible to the appellant. Therefore, in terms of Sub Rule 3(1) of Rule 6 of CENVAT Credit Rules, the department had demanded an amount of Rs.27,36,361/- equal to 6% on the amount of Rs.4,56,06,012/- being the value of the electricity sold to outside agencies i.e., power distribution companies during the period March 2015 under Rule 6 of the CENVAT Credit Rules, 2004. Even though, the appellants had used certain inputs which were common to the manufacture of dutiable goods as well s exempted goods, they had neither maintained separate records of inputs/input services, as provided in Rule 6(2), nor paid an amount equal to 6% of the value of such exempted goods. The Original Authority vide Order-in-Original confirmed the demand of duty along with interest at appropriate rate and penalty is also imposed on the appellant. Aggrieved by the said order, appellant filed appeal before the Commissioner (A), who rejected the same.

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 CENVAT 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. Shivratna 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.*
- *Tribunal's Final Order dated 31.12.2018 has set aside the impugned order and allowed the appeal of the appellant.*

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*

4.4 The learned counsel further submitted that the appellant has not availed any credit either on bagasse or on sugarcane or any input services as alleged by the department and hence, the question of reversal of proportionate credit does not arise. He also submitted that the department failed to identify the input services which are used in the generation of steam and electricity and hence, the very basis of demand for reversal of proportionate credit does not arise.

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 all the six appeals.

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

(Order was pronounced in Open Court on **31/01/2019**.)

S.S GARG
JUDICIAL MEMBER

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