

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

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

E/23/2009-DB

[Arising out of Order-in-Appeal No. 170/2008 dated
01/10/2008 passed by the Commissioner of Central Excise
(Appeals), Mangalore.]

SIDDAPUR DISTILLERIES LTD

1ST FLOOR, 2ND BLOCK, "SUKRUT" BUILDING
OPP, K.C.PARK MAIN ROAD, P.B.ROAD,
DHARWAD - 580 008.

Appellant(s)

VERSUS

**Commissioner of Central Excise,
Customs and Service Tax
BELGAUM**

NO. 71, CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM - 590001
KARNATAKA

Respondent(s)

Appearance:

Mr. N. Anand, Advocate

K.S. RAVI SHANKAR Advocate

No. 152(18), Race Course
Bangalore - 560001
Karnataka

For the Appellant

**Mrs. Kavitha Podwal,
Superintendent (AR)**

For the Respondent

CORAM:

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

HON'BLE MR. P.V. SUBBA RAO, TECHNICAL MEMBER

Final Order No. 20662 / 2019

Date of Hearing: 20/08/2019

Date of Decision: 20/08/2019

Per : P.V. SUBBA RAO

Heard both sides and perused the records. The appellant herein is a manufacturer of Ethanol which is chargeable to State Excise duty when

cleared as such and chargeable to Central Excise duty when it is cleared as denatured alcohol which is unfit for human consumption. They are registered with the Central Excise Department for manufacture of the denatured spirit as above. In the present appeal, two issues are involved. First if denial of CENVAT credit of Rs.1,84,322/- which they have availed on the input services during the period April 2006 to December 2006. Admittedly, they have not utilized the credit at all but had only availed the credit. The ground on which this credit is sought to be denied is that the services were used only in the manufacture of exempted products. On being pointed out by the Department, the appellant reversed the entire CENVAT credit on 10.1.2007 itself. Thereafter, the show-cause notice was issued to demand interest and impose penalty on the CENVAT credit so reversed. Learned counsel for the appellant submits that they are only contesting the demand of interest and imposition of penalty on this amount.

2. The second issue is the demand of Central Excise duty of Rs.2,34,980/- on MS gratings which the appellant got manufactured on job work basis on their job workers. These were manufactured using MS rods and bars which were supplied by the appellants to their job workers. It is the case of the department that the appellant had got these MS gratings manufactured through job workers and they were, therefore, liable to pay central excise duty on these goods. It is the case of the assessee that these are capital goods used within the factory of their manufacture and therefore, they are exempted by Notification No.67/95-CE dated 16.3.1995. For this reason, appellant is contesting the duty liability on these MS gratings as well as the penalty of equal amount imposed under Section 11AC.

3. After following the due process, the Original Authority confirmed the demand of Central Excise duty along with interest and imposed a penalty under Section 11AC of the Central Excise Act, 1944. He also disallowed the CENVAT credit and ordered recovery under Rule 14 of CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944 and appropriated the amount already debited by the appellant towards this demand. Further, he imposed a penalty of Rs.1,84,322/- on the assessee under Rule 15 of CENVAT Credit Rules, 2004.

4. Aggrieved, the appellant appealed before the first appellate authority who, vide the impugned order, rejected the appeal and upheld the Order-in-Original. Hence, this appeal.

5. Learned counsel for the appellant argues that as far as the CENVAT credit is concerned, it was availed on the input services allegedly used in the manufacture of exempted products but the credit so availed was not utilized by them at all. Therefore, when the credit was availed but not utilized and reversed before any utilization, it is as good as not availing the benefit of CENVAT credit at all. Therefore, interest cannot be demanded under CENVAT Credit Rules, 2004 on such CENVAT credit nor any penalty can be imposed on them. He relies on the case law of ***CCE vs. Bill Forge Pvt. Ltd.: 2012 (279) ELT 209 (Kar.)*** in which the jurisdictional Hon'ble High Court of Karnataka has held that when the CENVAT credit is availed but not utilized, no interest or penalty is payable. He also places reliance on ***Steer Engineering Pvt. Ltd. vs. CCE: 2017 (358) ELT 390 (Tri.-Bang.)*** and ***J. K. Tyre & Industries Ltd. vs. CCE: 2016 (340) ELT 193 (Tri.-LB)***. In view of the above, he would urge that it is a well settled legal position that where CENVAT credit has been availed but not utilized and reversed, it is as good as not availing the CENVAT credit at all and no interest or penalty can be imposed on such CENVAT credit. He would also further urge that Rule 6 of CENVAT Credit Rules, 2004 forbids taking of CENVAT credit on inputs / input services used wholly in manufacture of exempted goods. Until 1.3.2015, the term "exempted goods" do not include non-excisable goods when Explanation 1 was inserted to this effect. This Explanation only has prospective effect and was not retrospectively applicable. Therefore, they were, strictly not even required to reverse the CENVAT credit during the relevant period.

6. As far as the second issue of demand of Central Excise duty on MS gratings is concerned, he would urge that they had supplied the raw materials to their job workers but made the gratings and supplied to them. The distillery is an integrated plant processing the inputs into the final products. This plant is quite large and requires workers to work and operate it at various levels. The gratings are used to make platforms to enable the

workers to climb up and down and move around from one part of the plant to the other. Therefore, the gratings are nothing but the capital goods used in the plant. He would urge that the original authority sought to reject that gratings are "capital goods" in view of the definition of "Capital Goods" under CENVAT Credit Rules, 2004 as follows:

(A) The following goods, namely:-

- (i) All goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to the Excise Tariff Act;
- (ii) Pollution control equipment;
- (iii) Components, spares and accessories of the goods specified at (i) and (ii);
- (iv) Moulds and dies, jigs and fixtures;
- (v) Refractories and refractory materials;
- (vi) Tubes and pipes and fittings thereof; and
- (vii) Storage tank,

Used –

- (1) In the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or
- (2) For providing output service;

(B) Motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act:

He would submit that the lower authority felt that since gratings are classifiable under Chapter 73 of the Central Excise Tariff Act and not under Chapters 82, 84, 85 or 90, they do not qualify as capital goods. He would urge that the gratings in question are nothing but accessories of the plant of the appellant and therefore, are clearly covered by "components, spares and accessories of the goods specified at (i) and (ii) in the above definition". He would, therefore, urge, regardless of where in the Central Excise Tariff the gratings fall, they being accessories of plant itself as explained above would qualify as capital goods. As these are manufactured and used as capital goods within the factory of manufacture, they are entitled to the benefit of exemption under Notification No.67/95-CE dated 16.3.1995 and therefore,

no duty is payable on them. Consequently, no penalty is also imposable upon them. He relies on the following case laws:

- (i) ***Thiru Arooran Sugars vs. CESTAT: 2017 (355) ELT 373 (Mad.)***, in which the Hon'ble High Court of Madras has held that MS structural which support plant and machinery, and cement and plant, which went into erecting foundations to hold plant and machinery are integral part of the capital goods and hence are eligible for CENVAT credit.
- (ii) ***Nava Bharat Ferro Alloys Ltd. vs. CCE: 2017 (358) ELT 145 (AP)*** in which CENVAT credit was allowed on columns of heavy fabricated structures and bracings used to support boiler, holding the same to be a part of the boiler.
- (iii) ***CCE vs. Singhal Enterprises Pvt. Ltd.: 2018 (359) ELT 313 (Chhat.)*** in which the structural steel items used for fabrication of support structures of capital goods were held to be capital goods as per Rule 2(a) of CENVAT Credit Rules, 2004.

7. Learned Departmental Representative reiterates the findings of the lower authorities and asserts that the demands were confirmed correctly and the penalties were imposed as per law and the impugned order calls for no interference, therefore, the appeal may be rejected.

8. We have considered the arguments of both sides and perused the records. As far as the first question of CENVAT credit on the input services used in the manufacture of exempted /non-excisable products is concerned, the appellant had, without utilizing the credit reversed the same on being pointed out by the Department. Therefore, in terms of the ratio laid down by the Hon'ble High Court of Karnataka in the case of ***Bill Forge Pvt. Ltd.*** (supra), no interest or penalty can be imposed upon the appellant. Reversal of CENVAT credit which has been taken before its utilization is as good as not taking the credit at all. Therefore, no interest can be charged from the appellant nor can any penalty be imposed upon them and they need to be set aside and we do so.

9. As far as the demand of Central Excise duty on MS gratings used as capital goods is concerned, it is not in dispute that these have been manufactured by the job workers of the appellant at their behest outside the factory and supplied to them. It is also not in dispute that the gratings so manufactured have been used in their factory not in manufacture of final products but in providing structural support to their plant. It is the case of the Revenue that Central Excise duty has to be paid by the appellant on these goods which are manufactured by their job workers. The case of the appellant that no Central Excise duty is payable because these are capital goods used within the factory of manufacture and therefore, exempted vide Notification No.67/95-CE. This Notification exempts capital goods which are manufactured and used within the factory of manufacture. The department's case is that since these MS gratings fall under Chapter 73 and not under Chapter 82, 84, 85 or 90 as specified in Rule 2 of CENVAT Credit Rules, 2004 even if these are used as capital goods they do not qualify as per CENVAT Credit Rules, 2004 to be called as capital goods. Hence, no exemption under Notification No.67/95-CE is available. We have considered the issue. It is true that as per the definition of capital goods in the CENVAT Credit Rules, 2004 only goods falling under Chapter 82, 84, 85 and 90 of the Central Excise Tariff are covered. However, components, spares and accessories of the aforesaid goods are also covered as capital goods in the definition itself. No restriction of the Central Excise Tariff heading of these components, spares or accessories is given in the definition. In other words, as long as they are components, spares, etc., of the capital goods, they automatically get covered as capital goods regardless of which chapter of Central Excise Tariff they fall under. For this reason, the gratings manufactured by the appellant through their job workers and used in their plant mainly as stairs and platforms meant for workers to walk around and climb up and down in the plant, do qualify as accessories of the plant itself. Therefore, they get covered by the definition of Capital Goods. Accordingly, the exemption under Notification No.67/95-CE is available to them. In concluding so, we rely on the binding precedent of the judgment of the Hon'ble High Court of Madras in the case of **Thiru Arooran Sugars** (supra).

10. Accordingly, the impugned order is unsustainable and needs to be set aside and we do so. Appeal is allowed and the impugned order is set aside with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **20/08/2019.**)

S.S GARG
JUDICIAL MEMBER

P.V. SUBBA RAO
TECHNICAL MEMBER

rv...