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

Appeal(s) Involved:

E/988/2009-DB

[Arising out of Order-in-Appeal No. 313/2009 dated 03/08/2009 passed by the Commissioner of Central Excise (Appeals), Mangalore.]

M/s. BANNARI AMMAN SUGARS LTD.
POST BOX NO.27, ALAGANCHI VILLAGE,
NANJANGUD – 571 301.

Appellant(s)

Versus

The Commissioner of Central Excise
S1-S2, VINAYA MARGA,
SIDDHARTHA NAGAR,
MYSORE – 570 011.
KARNATAKA

Respondent(s)

Appearance:

Mr. K. S. Ravi Shankar,
Mr. N. Anand, Advocates
152, Race Course Road
Bangalore – 560 001.

For the Appellant

Mr. Rama Holla,
Superintendent (AR)

For the Respondent

Date of Hearing: 27/09/2019
Date of Decision: 27/11/2019

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21148 /2019

Per : P. ANJANI KUMAR

The appellants, M/s. Bannari Amman Sugars Ltd., are manufacturers of sugar, excisable goods such as molasses, denatured spirit, ethanol, etc., emerge as by-products; ethyl alcohol is manufactured by further fermentation and distillation from molasses which is captively consumed in the distillery for the purpose. The appellant claimed that molasses captively consumed are exempt from excise duty in terms of Notification No.67/95-CE. The appellants did not claim any CENVAT credit in respect of inputs used in the manufacture of molasses. Department has issued a show-cause notice dated 21.7.2008 seeking to deny the exemption under Notification No.67/1995-CE and rejecting refund claim of Rs.74,54,625/- on the issue that break-up of consumption of molasses in excisable and non-excisable products is not given. Another show-cause notice dated 1.10.2007 seeking to deny refund claim of Rs.1,87,72,500/- was also issued. Both the show-cause notices were confirmed by Orders-in-Original dated 25.8.2008 and 15.11.2007, respectively. On an appeal filed by the appellants, Commissioner (A) vide Order No.313/2009 has upheld the Orders-in-Original and rejected the appeal filed by the appellants. Learned counsel for the appellant submits that learned Commissioner (A) has passed the order contrary to the ratio of the Tribunal in their own case reported in ***2018 (362) ELT 705 (T)***; the Tribunal held that molasses used for captive consumption in the manufacture of alcohol will be entitled for Notification No.67/95-CE dated 16.3.1995. The Tribunal relied upon ***Manakpur Chinni Mills Ltd. 2017 (6) GSTL 188 (T)***. Learned counsel further submits that the authorities below have wrongly held that duty was not refundable as molasses was used for manufacturing non-excisable products; rectified spirit is excisable and classifiable under CETH 2204.90; Tribunal in the case of ***Kotari Sugars and Chemicals Ltd.: 2010 (262) ELT 545 (T)*** has held that as long as molasses was covered under Column 2 and ethyl alcohol is covered under Column 3 as final product in the Notification cited above, benefit of exemption cannot be denied merely because such excisable goods were outside the purview of central levy. He also relied upon ***Hemraj Goardhan Das: 1978 (2) ELT J350 (SC)*** and ***Modi Distilleries and Others: 1995 SCC (5) 753*** for interpretation of excisable goods and classification of ethyl alcohol under Central Excise Tariff.

2. Learned AR reiterates the findings of OIO and OIA and relies upon the decision rendered in the case of ***Madhukar SSK Ltd. vs. CCE, Nasik : 2005 (190) ELT 508 (Tri.-Mumbai)***.

3. Heard both sides and perused the records of the case.

4. We find that Tribunal has already passed series of order in respect of the same issue. Therefore, the issue is no longer *res integra*. This Bench in appellant's own case cited above, observed as follows:

> "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 :
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>> "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. Before1-3-2005 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 place 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 :-
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>> "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 Hon'ble Supreme Court that ethyl alcohol and rectified spirit 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 allow the appeals with consequential relief. No costs."

4.1 By following the above, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Order was pronounced in Open Court on **27/11/2019.)**

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

RV