CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 2391 of 2012

[Arising out of Order-in-Original No. 07/2012 Commr. dated 30/04/2012 passed by Commissioner of Central Excise, Belgaum]

Shree Renuka Sugars Ltd
Unit-V, Village, Havalga, Tal Afzalpur,
Dist Gulbarga 585301

Appellant(s)

VERSUS

C.C.,C.E.& S.T-Belgaum
NO. 71...CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM,
KARNATAKA
590001

Respondent(s)

Appearance:

Shri Rahul Patil, Advocate for the Appellant

Shri Rama Holla, Superintendent(AR) for the Respondent

CORAM:
HON'BLE SHRI P ANJANI KUMAR, TECHNICAL MEMBER
HON'BLE SHRI P DINESHA, JUDICIAL MEMBER

Final Order No. 20028 /2022

Date of Hearing: 07/02/2022
Date of Decision:_10/02/2022

Per : P. ANJANI KUMAR

The appellants, M/s. Shree Renuka Sugars Ltd., Havalga, are engaged in the manufacture of sugar and by-products thereof; they have also established a bagasse-based unit for manufacturing steam, which is used in the manufacture of electricity which was partly utilised in the factory and partly sold to Government and other parties. The Revenue was of the opinion that the appellants having utilised input and input services used in the generation of electricity are required to reverse the credit in terms of Rule 6 of Cenvat Credit Rules, 2004 whereas the appellants contend that they have availed proportionate credit only on those inputs and input services used in the manufacture of dutiable goods. A show-cause notice was issued and proposals made therein were confirmed by the impugned order dt. 30.04.2012.

2.1. Learned counsel for the appellants submits that the Department tries to unsettle the established law by assumption and presumption basis; they have fixed portion of raw materials like sugarcane, chemicals, lubricants, packing materials and other consumables which are exclusively used in the manufacture of sugar; none of these are utilised in the manufacture of electricity; only item which is used is bagasse, the waste. He also submits that the Department erred in considering only the turnover of sugar, molasses and electricity and ignored turnover of other dutiable items like denatured ethanol etc.; the show-cause notice has also erred seriously in considering that the GTA service which is used for cane transportation is common for manufacturing dutiable and exempted goods whereas GTA services were utilised only for the manufacture of sugar and is no-way concerned with generation of electricity; as stated earlier, bagasse which is a waste product is only used for the generation of electricity.

2.2. Learned counsel further submits that the issue is no longer res integra and he relies upon the following cases:-

i. Balarampur Chinni Mills Limited Vs. UOI [2014(300) ELT 372 (All.)]
ii. Gularia Chinni Mills Vs. UOI [2014(34) STR 175 (All.)]
iii. UOI Vs. DSCL Sugars Limited [2015(322) ELT 769 (SC)}
iv. Final Order No.20352/2019, No.21642/2018, No.21314/2017 and No.20835/2016 in appellant’s own case.

2.3. He submits that it was incorrect for the Department to invoke the extended period of limitation for issuance of show-cause notice; the appellant has disclosed invoice-wise availment of inputs and input services along with monthly ER1 returns; generation and sale of electricity details were also submitted vide ER4 returns and the same are reflected in the balance sheet. Therefore, he submits that in view of the following cases, extended period cannot be invoked.

i. Nizam Sugar Factory Vs. CCE [2006(197) ELT 465 (SC)]
ii. Anand Nishikawa Co. Ltd. Vs. CCE, Meerut [2005(188) ELT 149 (SC)]
iii. Infinity Infotech Parks Ltd. Vs. UOI [2014(36) STR 37 (Cal.)]
iv. CCE Vs. HMM Ltd. [1995(76) ELT 97 (SC)]
v. Padmini Products Vs. CCE [1989(43) ELT 195 (SC)]
vi. Tally Solutions Private Limited Vs. CCE, Bangalore [2020(41) GSTL 520 (Tri. Bang.)]

3. Heard both sides and perused the records of the case. We find that as submitted by the learned counsel for the appellants, the issue is no longer res integra. This Bench relying upon the case of DSCL Sugars Limited (supra) and Gularia Chinni Mills Limited (supra) has decided the issue in favour of the very same appellant albeit in respect of another unit of the appellant. Following the ratio of the above decisions, we are of the considered opinion that the appeal survives on merits as well as limitation. In view of the above, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Order pronounced in the Open Court on **10/02/2022**)

(P ANJANI KUMAR)
TECHNICAL MEMBER

(P DINESHA)
JUDICIAL MEMBER

Raja...