

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60904 of 2017

[Arising out of Order-in-Appeal No. CE/PKL/Commr./10/2017 dated 17.08.2017
passed by the Commissioner (Appeals), CGST, Panchkula, Haryana]

M/s Naraingarh Sugar Mills Ltd.
PO Shahzadpur, Amabala, Haryana-134202

.....Appellant

VERSUS

**Commissioner of Central Excise,
Panchkula**
SCO 407-408, Sector 8, Panchkula-134119

.....Respondent

APPEARANCE:

Shri Sudeep Singh Bhangoo, Advocate for the Appellant

Shri Kanish Saini, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

FINAL ORDER NO. 60987/2025

DATE OF HEARING: 07.08.2025
DATE OF DECISION: 07.08.2025

P. ANJANI KUMAR:

The issue involved in the present case is whether the appellant is required to pay an amount equal to 6% of the sale price of bagasse and press mud, arising in the manufacture of sugar, under Rule 6(3) of CENVAT Credit Rules, 2004.

2. The appellants are engaged in the manufacture of sugar and molasses, bagasse and press mud are generated in the process.

Revenue issued a show cause notices, dated 20.09.2013, 13.10.2014, 01.05.2015, 26.04.2016, various amounts specified therein, covering the period 01.04.2012 to 31.03.2016. In view of the explanation inserted in Rule 6(1) of CENVAT Credit Rules, 2004 w.e.f. 01.03.2015, vide Notification No.6/2015-CE (NT) dated 01.03.2015, deeming that bagasse and press mud are excisable products for the purpose of Rule 6 of CENVAT Credit Rules, 2004, the original authority confirmed the demand of Rs.24,84,657/- for the period after 01.03.2015. On an appeal filed by the appellants, Commissioner (Appeals) vide Order dated 17.08.2017, confirmed the demand and reduced the penalty to Rs.2,48,466/-. Hence, this appeal.

2. Shri Sudeep Singh Bhangoo, learned Counsel for the appellants, submits that the issue is no longer res integra. High Court and Tribunal in the series of cases have held that the appellants did not pay an amount in terms of Rule 6(3) even after the insertion of explanation in Rule 6(1) of CCR, 2004. He relies on the following cases:

- Balrampur Chini Mills Ltd. Vs. union of India - 2019(368)ELT 276(All)
- Bhaurao Chavan SSK Ltd. Vs. Commissioner of CGST and Central Excise, Aurangabad - (2023) 10 Centax 37 (Tri.-Bom)
- M/s Simbhaoli Sugar Ltd. Vs. Commissioner of Central Excise Noida -2018-TIOL-2808-CESTAT-ALL
- Commissioner of Central Excise and CGST, Meerut-I Vs. M/s Bajaj Hindustan Sugar Ltd.- 2024-TIOL-391-CESTAT-ALL.

3. Learned Authorized Representative for the Department reiterates the findings of the impugned order.

4. Heard both sides and perused the records of the case. We find that the issue is no longer res integra as submitted by the learned Counsel for the appellants. We find that Hon'ble Allahabad High Court in the case of Balrampur Chini Mills (supra) held that:

19. Rule 6 of the Cenvat Credit Rules, 2004, as it existed prior to 28-2-2015, is as follows :-

"RULE 6. Obligation of a manufacturer or producer of final products and a provider of output service. —

(1) The Cenvat credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for exempted services, except in the circumstances mentioned in sub-clause (2).

(2) Where a manufacturer or provider of output service avails of Cenvat credit in respect of any inputs or input services, and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take Cenvat credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow either of the following options as applicable to him, namely :-

(i) the manufacturer of the goods shall pay an amount equivalent to five per cent of the value of the exempted goods

and the provider of output service shall pay an amount equal to six per cent of the value of the exempted services; or

(ii)"

20. The Union of India amended Cenvat Credit Rules, 2004 with effect from 1-3-2015 by inserting [Explanations 1 and 2 in Rule 6(1), which reads as under :-

"Explanation 1. - For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.

Explanation 2. - Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder."

21. A perusal of Rule 6(1) clearly shows that the manufacturer has to manufacture dutiable goods as well as exempted goods. Since Bagasse is not manufactured goods but the waste product which emerges/comes into existence in the process of manufacture of sugar, and therefore the production of Bagasse cannot be held to be manufacture of exempted goods.

22. Rule 6(2) provides that where a manufacturer avails of Cenvat credit in respect of any inputs and manufactures such final products which are chargeable to duty as well as exempted goods, the manufacturer shall maintain separate accounts for the same, and in an inventory of input meant for use in the manufacture of dutiable final product and the quantity of input meant for the use in the manufacture of exempted goods.

23. As per Rule 6(3) the manufacturer of dutiable final product and the manufacturer of exempted goods who does not maintain separate accounts shall be liable to pay an amount of 5% of the value of the manufactured goods.

24. The Hon'ble Supreme Court in the case of *Union of India and Others v. M/s. DSCL Sugar Ltd. and Others* (supra), held that Bagasse is not a manufactured product but an agricultural waste and residue, which itself is not the result of any

process. It is relevant to point out that in the said judgment the Hon'ble Court also considered the amendment in Section 2(d) wherein in the definition of "excisable goods" were duly amended to include any article or material substance capable of being bought or sold for consideration and as such could/shall be deemed to be marketable, and therefore the fiction was introduced wherein certain kinds of goods were treated to be marketable and thus excisable.

25. Considering the aforesaid amendment Hon'ble Supreme Court in *Union of India and Others v. M/s. DSCL Sugar Ltd. and Others* (supra) held :-

"However, before the aforesaid fiction is to be applied, it is necessary that the process should fall within the definition of "manufacture" as contained in Section 2(f) of the Act."

26. The Hon'ble Supreme Court also considered the definition of "manufacture" as provided in Section 2(f) of the Act wherein there is a deeming provision amounting to manufacture in respect of certain goods, and specifically with regard to Bagasse and held as under :-

"In the present case it could not be pointed out as to whether any process in respect of Bagasse has been specified either in the section or in the chapter notice. In the absence thereof this deeming provision cannot be attracted. Otherwise, it is not in dispute that Bagasse is only an agricultural waste and residue, which itself is not the result of any process. Therefore, it cannot be treated as falling within the definition of section 2(f) of the Act and [in] the absence of manufacture, there cannot be any Excise duty.

Since it is not a manufacture, Rule 6 of the Cenvat Credit Rules, 2004, shall have no application rightly held by the High Court."

27. After the aforesaid judgment which has clearly held Bagasse not to be a manufactured product, and therefore Rule 6 of the Cenvat Credit Rules, 2004 shall have no application, Section 6(1) has been amended by inserting the 2 Explanations, which the respondent contends is sufficient to

include Bagasse within the fold of Section 6, and further to justify the stand for a reversal of Cenvat Credit Rules, 2004.

28. A perusal of the Explanation 1 to Rule 6 would indicate that it provides that the exempted goods and final product as defined in Clauses (d) & (h) of Rule 2 shall include non-excisable goods cleared for a consideration from the factory.

29. Explanation 1, talks about the inclusion of non-excisable goods cleared for consideration from the factory within the category of exempted goods or final products while the Circular dated 25-4-2016 proceeds on the basis that Bagasse is a non-excisable goods and is now to be treated like exempted goods for the purpose of a reversal of input and Input service.

30. As noted by the Hon'ble Supreme Court in the case of *Union of India and Others v. M/s. DSCL Sugar Ltd. and Others* (supra) specifically in the contest of Bagasse, Rule 6 applies only when there is a manufacture of final products or of exempted products, and if there is no manufacture, Rule 6 of the Cenvat Credit Rules, 2004, has no application.

31. This amendment may have the effect of treating Bagasse to be an exempted goods, but cannot result in Bagasse being manufactured goods, as the nature of Bagasse remains that of an agricultural waste and residue and is not in effect a product. This aspect and character of Bagasse remains unaltered by insertion of Explanation 1.

32. In absence of Bagasse being a manufactured final product, the obligation of a reversal of Cenvat period under Rule 6(1) of the Cenvat Credit Rules, 2004 is not attracted. It has also been noticed that Bagasse has always been an "exempted goods" under Rule 2(d) of the Cenvat Credit Rules, 2004. It has been mentioned in Central Excise Tariff Heading 2303 20 000 and was subjected to NIL rate of duty. It therefore, fell within the definition of "exempted goods" as defined under Rule 2(d) and is not a non-excisable goods, as mentioned in the impugned circular.

33. That the Circular dated 25-4-2016 interpreting Explanation 1 to Rule 6 has provided that "consequently, Bagasse, dross and skimmings of non-ferrous metal or any

such by-product of waste, which are non-excisable goods and are cleared for consideration from the factory need to be treated like exempted goods for purpose of reversal of credit of input and input services, in terms of Rule 6 of the Cenvat Credit Rules, 2004. The circular therefore treating Bagasse to be a non-excisable goods, is clearly erroneous, and for this reason also the Circular dated 25-4-2016 is liable to be quashed with regard to Bagasse.

34. In light of the above we are of the considered opinion that in absence of Bagasse being a manufactured final product, the obligation of reversal of Cenvat Credit under Rule (1) of the Cenvat Credit Rules, 2004 is not attracted, and the ratio laid down in the judgment of the Hon'ble Supreme Court in the case of *Union of India and others v M/s. DSCL Sugar Ltd and Others* (supra) still holds the field. Rule 6 of the Cenvat Credit Rules would have no application for reversal of Cenvat Credit in relation to Bagasse. The Circular No. 1027/15/2016-CX, dated 25-4-2016, contained in Annexure-1 to the writ petition to the extent that it includes Bagasse under the purview of the reversal of credit of input services in terms of Rule 6 of the Cenvat Credit Rules, 2004, as well as the impugned show cause notice dated 24-3-2017 contained in Annexure-2, are hereby quashed.

5. In view of the above, the appeal is allowed.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)