CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60156 of 2021

[Arising out of Order-in-Appeal No. APPL-PKL-COMMR-69-70/2020-21 dated 09.02.2021 passed by the Commissioner (Appeals), CGST, Panchkula]

Singhal Industries **......Appellant**
Plot No. 10, IDC, Delhi-Hisar Road,
Hisar, Haryana 125005

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Rohtak **......Respondent**
2nd Floor, Pacific City Centre,
Near Jaat Bhawan, Delhi-Rohtak Road,
Rohtak, Haryana – 124001

WITH

Excise Appeal No. 60157 of 2021 (Rajesh Jain)
[Arising out of Order-in-Appeal No. APPL-PKL-COMMR-69-70/2020-21 dated 09.02.2021 passed by the Commissioner (Appeals), CGST, Panchkula]

Excise Appeal No. 60208 of 2021 (Galzn Wire Private Limited)
[Arising out of Order-in-Appeal No. APPL-PKL-COMMR-84-85/2020-21 dated 09.03.2021 passed by the Commissioner (Appeals), CGST, Panchkula]

Excise Appeal No. 60209 of 2021 (Rakesh Jain)
[Arising out of Order-in-Appeal No. APPL-PKL-COMMR-84-85/2020-21 dated 09.03.2021 passed by the Commissioner (Appeals), CGST, Panchkula]

APPEARANCE:

Mr. Aman Garg, Advocate for the Appellants

Mr. 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. 61419-61422/2025

DATE OF HEARING: 24.09.2025
DATE OF DECISION: 24.09.2025

S. S. GARG:

These four appeals are directed against two impugned orders passed by the Commissioner (Appeals), Panchkula, first dated 09.02.2021 in respect of M/s Singhal Industries and its partner Shri Rajesh Jain, and second dated 09.03.2021 in respect of M/s Galzn Wire Private Limited and its director Shri Rakesh Jain, vide which the learned Commissioner (Appeals) has rejected the appeals of the appellants and upheld the orders of lower authority. Since the issue involved in all these appeals is identical, therefore, all four appeals are taken up together for discussion and decision. For the sake of convenience, the facts of the Appeal No. **E/60156/2021** of M/s Singhal Industries are taken.

2. Briefly stated facts of the present case are that the appellant is engaged in the manufacture of Zinc Ingots and Zinc Sulphate fertilizer falling under Chapter Heading Nos. 7901 & 2833 of the Central Excise Tariff Act, 1985. The DGGI initiated an investigation and visited the factory premises of the appellant. Statement of Shri Dharminder Kumar, Authorized Signatory was recorded, in which it was *inter alia* stated that their firm manufactures Zinc Ingots and they purchase Zinc Ash and Zinc Skimming fertilizers; they pulverize Zinc Skimming which results into Zinc Metal and Zinc Ash; the metal portion is melted in furnace and converted into Zinc Ingots; Zinc Ash powder is captively consumed as well as sold on payment of Central Excise Duty; the captively consumed Zinc Ash is cleared on payment of Central Excise Duty.

2.1 On the basis of the statement of Shri Dharminder Kumar, Authorized Signatory and factual position of the product, the DGGI formed an opinion that the appellant could not have chosen to clear Zinc Ash on payment of duty when no such duty is leviable; an invoice for captive consumption can be issued if a new, distinct and excisable product emerges after the manufacturing process which was not in the present case; the residual Zinc Ash was non-excisable, therefore, there was no legal requirement to issue invoice for captive consumption and as such no duty was required to be paid.

2.2 Thereafter, on the basis of the judgment of Hon'ble Supreme Court in the case of Union of India Vs. DSCL Sugar Ltd – 2015 (322) ELT 769 (SC) and subsequent Circular No. 1027/15/2016-CX dated 25.04.2016, the department issued the Show Cause Notice to the appellant, and after following the due process, the learned Adjudicating Authority confirmed the demand along with interest and equal penalty; a penalty under Rule 26 of the Central Excise Rules was also imposed on Shri Rajesh Jain, the partner of the appellant. The same were also upheld by the learned Commissioner (Appeals). Hence, the present appeals.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside in view of the judgment of Hon’ble Supreme Court in the case of **Union of India vs. Indian Sucrose Limited [Order dated 04.03.2022 in SLP(C) No. 1700/2021]** wherein the Hon’ble

Supreme Court has held that Circular dated 25.04.2016 is unsustainable in law as bagasse is non-excisable goods to which Cenvat Credit Rules have no application. He further submits that on the basis of the said judgment of the Hon'ble Supreme Court, the Board has now rescinded the Circular dated 25.04.2016 by issuing a fresh **Circular No. 1084/05/2022-CX dated 07.07.2022** in which it is clarified that law laid down by the Hon'ble Supreme Court is to be followed. He further submits that the issue involved in the instant appeals is identical and has been decided by this Tribunal in favour of the appellants-assessees in the case of **Mahesh Chemicals Allied Industries [**vide **Final Order No. 60450-60451/2024 dated 30.07.2024** in **Appeal No. E/60272/2020]**, wherein the Tribunal after considering all the facts and circumstances and the legal positions, has allowed the appeals of the appellants-assessees. He further submits that the decision of the Tribunal in **Mahesh Chemicals Allied Industries** (supra)'s case has subsequently been followed by this Tribunal in the case of **Shri Ram Ago Chemicals Pvt Ltd [**vide **Final Order No. 60581-60584/2024 dated 16.10.2024** in **Appeal No. E/60370/2020]**. He further prays that the present appeals may also be decided as per the above cited decisions.

5. On the other hand, the learned Authorized Representative for the department reiterates the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on record, we find that this issue involved in

these appeals is no more *res integra* and has been settled by the Hon'ble Supreme Court in the case of **Union of India vs. Indian Sucrose Limited** (supra) which has been subsequently followed by the Tribunal in the case of **Mahesh Chemicals Allied Industries** (supra) as well as in the case of **Shri Ram Ago Chemicals Pvt Ltd** (supra) wherein this Tribunal has allowed the appeals of the appellants-assessees. Here, it is pertinent to reproduce the relevant findings of the Tribunal in the case of **Mahesh Chemicals Allied Industries** (supra), which are reproduced herein below:

> *"**6**. After considering the submissions made by both the parties and perusal of the material on record, we find that the entire proceedings in this case was initiated on the investigation conducted by the DGGI and the same was based on the judgment of Hon'ble Supreme Court in the case of Union of India Vs. DSCL Sugar Ltd (supra) and subsequent Board Circular No. 1027/15/2016-CX dated 25.04.2016, wherein it has been clarified that the products including bagasse, dross and skimming are non-excisable goods. Further, as per the explanations 1 & 2 inserted w.e.f. 01.03.2015, exempted goods shall include non-excisable goods cleared for consideration from /the factory. As per the Circular dated 25.04.2016, it was provided that Zinc Ash and Skimming are non-excisable goods and need to be treated as exempted goods for the purpose of reversal of the credit of inputs or input services in terms of the Rule 6 of the CCR, 2004. As per the department, the appellant did not avail the option under Rule 6(2) and under Rule 6(3) and further did not maintain separate register for quantity of Zinc Ash used in the manufacture of their dutiable products and their exempted products.*

***7**. Further, we find that the department has confirmed the demand solely relied upon the judgment of Hon'ble Supreme Court in the case of Union of India Vs. DSCL Sugar Ltd (supra) and subsequent Board Circular No. 1027/15/2016-CX dated 25.04.2016. We also note that subsequently the same issue came up before the Hon'ble Supreme Court in the case of Union of India Vs. Indian Sucrose Limited (supra) wherein the Hon'ble Supreme Court vide its order dated 04.03.2022 has held that Circular dated 25.04.2016 is unsustainable in law as bagasse is non-excisable goods to which cenvat credit has no application. It is pertinent to note that subsequent to the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Indian Sucrose Limited (supra), the Board has issued fresh Circular No. 1084/05/2022-CX dated 07.07.2022 and has rescinded the Circular dated 25.04.2016 on the basis of which, the entire demand was created. Here, it is pertinent to reproduce the Circular dated 07.07.2022, which is reproduced herein below:*

"**Circular No. 1084/05/2022-CX dated 07-07-2022**

F.No. CBIC-110267/33/2022-CX-VIII SECTION-CBIC

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Tax & Customs, New Delhi

Subject: Excisability of waste/residue arising during the process of manufacture - Withdrawal of Circular No. 1027/15/2016-CX dated 25.04.2016 - Reg.

Excisability of bagasse and similar other by-products or waste arising during the course of manufacture of an excisable product has been brought to the attention of the Board.

2. It may be recalled that Rule 6 of the CENVAT Credit Rules, 2004 was amended with effect from 1.03.2015 by inserting Explanation 1 and 2 in sub-rule (1) of Rule 6, which provides that exempted goods or final product shall include non-excisable goods cleared for consideration from the factory.

3. Accordingly, Circular No. 1027/15/2016-CX dated 25.04.2016 was issued highlighting that Bagasse, Dross and Skimmings of non-ferrous metals or any such by-product or

waste, which are non-excisable goods and are cleared for a consideration from the factory need to be treated like exempted goods for the purpose of reversal of credit of input and input services, in terms of Rule 6 of the CENVAT Credit Rules, 2004. This circular was issued in the background of judgement of the Hon'ble Supreme Court in the case of Union of India Vs. M/s. DSCL Sugar Ltd [2015 (322) E.L.T. 769 (S.C.)] holding that Bagasse is only an agricultural waste and residue and it is not a result of any process which can be termed as 'manufacture'. Similar conclusion was also drawn by the Hon'ble High Court of Bombay in the case of M/s Hindalco Industries Ltd. Vs. Union of India [(2015 (315) E.L.T.10 (Bom.)] in relation to dross and skimming of aluminium, zinc or other non-ferrous metals.

4. The issue again came before the Hon'ble Supreme court in the case of Union of India Vs. M/s. Indian Sucrose Limited [SLP(C) No. 1700/2021], wherein the Hon'ble Supreme Court vide its judgment dated 04.03.2022, referred to its observations in the Union of India vs. M/s. DSCL Sugar Ltd & Ors. (supra) holding that Bagasse is non-excisable to which the CENVAT Credit Rules have no application, and held that the Circular dated 25.04.2016 is unsustainable in law.

5. In light of the above judgment, Circular No. 1027/15/2016-CX dated 25.04.2016 has become non-est and is hereby rescinded. Cases kept in Call Book on the above issue, if any, may be taken out and adjudicated in light of the law decided by the Apex Court.

6. Difficulty experienced, if any, in implementing the circular should be brought to the notice of the Board.

7. Hindi version will follow."

8. *…………*

9*. Further, we also find that the identical issue was involved in the case of M/s Haryana Agro Chemicals, wherein vide Order dated 12.04.2021, the Additional Commissioner of Central Excise & GST, Chandigarh by relying upon the judgments in the cases of CCE, Surat-III vs. Creative Enterprises and CCE, Pune-III vs. Ajinkya Enterprises has dropped the proceedings initiated against the assessee and also dropped the penalty on the partner. Further, in the case of M/s Shri Ram Agro Chem Pvt Ltd, wherein vide Order dated 26.03.2024, the Assistant Commissioner, Central Excise & GST Division, Sirsa by relying*

> *upon the decision of Hon'ble Supreme Court in the case of Union of India Vs. Indian Sucrose Limited (supra) and also relying upon the Board Circular No. 1084/05/2022-CX dated 07.07.2022 has dropped the proceedings initiated against the assessee.*
>
> ***10**. ……*
>
> ***11**. In view of our discussion above and by following the ratio of the judgment of Hon'ble Apex Court in the case of Union of India Vs. Indian Sucrose Limited (supra) and further relying upon the subsequent Board Circular No. 1084/05/2022-CX dated 07.07.2022, we are of the considered opinion that the impugned order is not sustainable in law and is liable to be set aside and we do so by allowing both the appeals of the appellant with consequential relief, if any, as per law."*

7. By following the ratios of the judgment of Hon'ble Supreme Court in **Union of India vs. Indian Sucrose Limited** (supra)'s case and decision of the Tribunal in **Mahesh Chemicals Allied Industries** (supra)'s case, we are of the considered opinion that the impugned orders are not sustainable in law and are liable to be set aside and we do so by allowing all the four appeals of the appellants with consequential relief, if any, as per law.

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

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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