CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Excise Appeal No. 40758 of 2019

(Arising out of Order-in-Appeal No. 65/2019 SLM-CEX dated 13.02.2019 passed by the Commissioner of G.S.T. & Central Excise (Appeals), Coimbatore, Circuit Office @ Salem Commissionerate, No.1, Foulke's Compound, Anai Road, Salem – 636 001)

M/s. Bannari Amman Sugars Ltd., : **Appellant**
Alathukombai (Post), Sathyamangalam,
Erode – 638 401

VERSUS

The Commissioner of G.S.T. & Central Excise : **Respondent**
Salem Commissionerate,
No. 1, Foulke's Compound, Anaimedu,
Salem – 636 001

APPEARANCE:

Shri. P.C. Anand, Consultant for the Appellant

Shri. S. Govindarajan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40923 / 2019

DATE OF HEARING: 09.07.2019

DATE OF DECISION: 09.07.2019

By this appeal, the assessee-appellant is challenging the demand raised and confirmed by the First Appellate Authority on Press Mud.

2. The undisputed facts *inter alia* are that a Statement of Demand dated 16.04.2018 came to be issued proposing to demand and recover a sum of Rs. 4,15,852/-, being the tax payable at 6% of the clearance value of Press Mud and that the Statement of Demand refers to various Show Cause Notices issued earlier, right from May 2008 to December 2016 (seven Show Cause Notices).

3. Today, when the matter was taken up for hearing, Shri. P.C. Anand, Ld. Consultant, appeared for the assessee and Shri. S. Govindarajan, Ld. AR, appeared for the Revenue.

4. Ld. Consultant contended that the only issue, of taxability of Press Mud in the hands of the assessee, is more or less settled in favour of the assessee as the same has been decided by the Chennai Bench of the CESTAT in respect of most of the Show Cause Notices referred to in the Statement of Demand and thus submitted that the issue is no more *res integra.*

5. On the other hand, Ld. AR supported the findings of the lower authorities.

6. I have considered the rival contentions and gone through the documents as well as orders placed on record.

7. After going through the orders of this Bench, I find the assertion of the Ld. Consultant for the appellant to be correct. While deciding identical issue for an earlier period in Appeal Nos. E/41850-41852/2018, vide ***Final Order Nos. 42961-42963/2018 dated 16.11.2018***, this Bench observed as under :

> *"6. I have considered the rival contentions, perused the documents placed on record and have also gone through the Order of this Bench (supra) relied on during the course of arguments.*
>
> *7.1 Explanations 1 and 2 which are inserted vide amendment dated 01.03.2015, read 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.]"*
>
> *7.2 Admittedly, as held by both the lower authorities, there is no duty liability on non-excisable goods cleared for a consideration, prior to 01.03.2015 and for this reason, the adjudicating authority has felt it proper and dropped the SOD up to 28.02.2015 (refer to paragraph 11.11 at page 17 of the Order-in-Original).*
>
> *8.1 Now the question is, whether press mud, a waste, is a non-excisable commodity or not; and whether it is hit by the Explanations inserted with effect from 01.03.2015? Explanation 1 applies to*

exempted goods or final products including non-excisable goods cleared for a consideration. Rule 2(d) of the CENVAT Credit Rules (CCR), 2004 defines "exempted goods" to mean excisable goods which are exempt from the whole of the duty, to also include goods which are chargeable to nil rate of duty and the goods used impliedly suggest a final product. Rule 2(h) of CCR, 2004 defines "final products" to mean excisable goods manufactured or produced from input or using input service. The ***CBEC Circular No. 1027/15/2016 CX*** *which justified the continuance of Explanations 1 and 2 after the judgement of the Hon'ble Apex Court in the case of* ***Union of India and Ors Vs. M/s. DSCL Sugars Ltd. reported in 2015 (322) E.L.T. 769 (S.C.)*** *had indicated the consequence, at paragraph 4.2, which reads as under:*

> *"4.2 Consequently, 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."*

8.2 The above clarification includes items like Bagasse, Dross and Skimmings of non-ferrous metals or any such by-product or waste which are termed as "non-excisable goods" which find entry in Central Excise Tariff Act (CETA), 1985. The interpretations drawn by various courts including the Hon'ble Supreme Court and also the clarifications issued by the Board only lead to the conclusion that all non-excisable goods are not wastes, but it may be a case that all wastes are non-excisable. Non-excisable goods are treated as exempted goods by virtue of being not listed in CETA, for example, water which is exempted and hence, non-excisable. Bagasse, which by virtue of being a non-excisable good is a by-product or waste, is placed under Sub-heading 2303 2000 though attracting nil rate of duty. The same is not the case with press mud, which is clearly not defined nor is it declared as a non-excisable good, but the same does not figure out in CETA because it is just a waste. The legislature is therefore clear in terming what is a non-excisable good/item or a waste and while clarifying, even the Board has omitted press mud while covering all other 'wastes' which are non-excisable goods. Therefore, "any such by-product" cannot take a different colour than Bagasse, Dross and Skimmings of non-ferrous metals, nothing more nothing less and that it should figure out as a 'non-excisable goods' per se. Therefore, I am of the view that press mud cannot be compared with other by-products like bio-compose or even bagasse for that matter. Moreover, from a bare reading of Explanations 1 and 2 (supra), I find that press mud does not fit into the definition of "exempted goods", as defined under Rule 2(d) of CCR because it is not an excisable good; nor can it be termed as a final product because it is not manufactured or produced from input or using input service. This is because it is a natural by-product which does not involve any effort nor is it the primary intention of a sugar manufacturer to intend to manufacture press mud.

9. In view of the above, I am of the considered opinion that the amendment heavily relied on by the lower authorities does not cover

> *"waste" and there being no change with regard to facts, the Order of this Bench in the appellant's own case (supra) is squarely applicable; the assessee is not liable to pay any duty and therefore, the demand is set aside.*
>
> *10. The appeals are allowed with consequential benefits, if any, as per law."*

8. The issue involved in the case on hand being identical, the above ratio squarely applies to the present case as well. Hence, by applying the above ratio, the Statement of Demand and the impugned order cannot sustain and hence, the same are set aside.

9. The appeal is allowed with consequential benefits, if any, as per law.

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

(P. DINESHA)
MEMBER (JUDICIAL)

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