IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/40416 – 40422/2019

[arising out of Order-in-Appeal No.187/2018 –TRY [CEx.], dated 05.12.2018 passed by the Commissioner of GST & CE (Appeals), Coimbatore]

M/s.ARIGNAR ANNA SUGAR MILLS APPELLANT

Versus

COMMISSIONER OF GST & CE, TIRUCHIRAPALLI RESPONDENT

Appearance:

For the Appellant Shri K. Mani, Cons.
For the Respondent Shri B. Balamurugan, AC (AR)

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)

Date of hearing/decision **05-08-2019**

FINAL ORDER NOs. **41005-41011 / 2019**

The issue is whether the appellant is liable to pay an amount equivalent to 10%/6%/5% on the clearances of bagasse.

2. On behalf of the appellant, learned consultant Shri K. Mani submitted that the appellant is engaged in manufacture of sugar and is registered with the department. As part of the manufacturing process bagasse is generated as waste. The department proposes to consider the said bagasse as exempted goods manufactured by the appellant and thus demand has been made as per Rule 6(3) of Central Excise

Rules alleging that the appellant has to pay amount equivalent to the value of the clearances of bagasse made by the appellant. He adverted to Explanation 1 inserted in 2015 under Rule 6 and argued that the said Explanation will not be applicable to bagasse that emerges during the manufacture of sugar. The appellant does not consciously manufacture bagasse and, therefore, the Explanation is not applicable to the bagasse which is generated as a waste during the process of manufacture. He relied upon the decision of the Tribunal in the case of *M/s. Kichha Sugar Company Ltd., Vs CGST,CC & CE, Dehradun* reported in *2018 (10) TMI 1151 – CESTAT NEW DELHI* as well decision of the Hon'ble Allahabad High Court in *M/s. Balrampur Chini Mills Ltd., Vs Union of India* reported in *2019 (5) TMI 972 – Allahabad High Court.*

2. The learned Authorised Representative Shri B. Balamurugan, AC (AR) supported the findings in the impugned order.

3. Heard both sides.

4. The department has raised the demand alleging that the appellant is manufacturing bagasse and as per Explanation inserted in Rule 6 with effect from 2015 such bagasse cleared on consideration has to be treated as exempted goods. The said issue has been considered by the Tribunal in the case of M/s. *Kichha Sugar Company Ltd.,* (supra), wherein the Tribunal has observed as under:-

> "7.1 The moot question in the given circumstances is as to whether the impugned waste invites the payment of excise duty in accordance of Rue 6 (3) of CCR, 2004.
>
> 8. The perusal of case laws as impressed upon by the appellant reflects that the issue herein is no more *res integra*. The Hon'ble Apex Court in the case of *Union of India Vs DSCL Sugar Ltd*., - *2015 (322) E.L.T.769* has held that products like bagasse and press-mud do not qualify the definition of section 2F of CEA and as such are not being a manufacture. These are only an agricultural waste and residue which itself is not the result of any process and in

the absence of manufacture, there cannot be any excise duty. The Hon'ble Apex Court further clarified that since it is not a manufacture, Rule 6 of Cenvat Credit Rules shall have no application. For the better appreciation Rule 6 is reproduced herein below:-

> *"Rule 6(1) The Cenvat credit shall not be allowed on such quantity of inputs used in or in relation to the manufacture of exempted goods or for provisions of exempted services, or input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted service except in the circumstances mentioned in sub rule (2):*
>
> Provided that the CENVAT credit on inputs ……………………………….
>
> 8.1 This rule was amended w.e.f.01.03.2015 by inserting:
>
> *Explanation 1:- For the purpose 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 invoices value is not available such value shall be determined by using reasonable means consistent with the principles of valuation contained in Excise Act and Rules made there-under.*
>
> The words "used in or in relation to the manufacture" clarified that prior to 01.03.2015 this rule is invokable only where there is the activity of manufacture. As already discussed above that the goods in dispute are not the outcome of manufacture.
>
> Even after the amendment, Explanation -1 extends exemption in terms of Rule 2(d) and 2(h) as read below:-
>
> (d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "nil" rate of duty …..
>
> (h) "final products" means excisable goods manufactured or produced from input, …..
>
> 8.2 Since the main condition for Rule 6 is still, "*obligation of a manufacturer or producer of final products*" it doesn't extend to by-products released during the process of manufacture of main product that too without involvement of any such activity, which may be called as "manufacture".
>
> 9. In view thereof, I am of the opinion that irrespective of the amendment, there arises no liability upon the appellant to pay the duty as demanded for the period w.e.f. September, 2014 to February, 2015 in Appeal No.52211/2018 nor for the reversal of the credit as demanded for the period June, 2015 to March, 2016 in Appeal No.52210/2018."

5. The above said view has been approved by the Allahabad High Court in the case of M/s. *Balrampur Chini Mills Ltd.,* (supra). Following the said decision, I am of the view that the demand cannot

be sustained. These appeals are filed against the demand confirmed for the period after 2015. The impugned order to this extent is set aside. The appeals are allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL)

ksr
07-08-2019

	DRAFT			Remarks
	I	**II**	**III**	
Date of dictation	**05.08.2019**			
Draft Order - Date of typing	**06.08.2019**			
Fair Order Typing	**07.08.2019**			
Date of number and date of dispatch	**07.08.2019**			