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

E/691/2009

(Arising out of Order-in-Appeal No. 127/2009 dated 8.9.2009 passed by the Commissioner of Central Excise (Appeals), Trichy)

M/s. Thiru Arooran Sugars Ltd. Appellant

Vs.

Commissioner of Central Excise, Trichy Respondent

Appearance

Ms. Cynduja Crishnan, Advocate for the Appellant
Shri R. Subramaniyam, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **09.11.2017**

Final Order No. 42906/2017

Per Bench

The appellant is engaged in processing of imported raw sugar into white sugar on job work basis for M/s. Thiru Arooran Sugars Ltd., with whom they have entered into a contract. During the process of conversion of raw sugar into white sugar, molasses emerge. The appellant was clearing the white sugar on payment of duty. Similarly, prior to the period in present appeal, the molasses were being cleared by them on payment of

Customs, Excise & Service Tax Appellate Tribunal

duty to their own distilleries for further conversion into rectified spirit.

2. However, during the period in question, as a common registration was procured by them for their Unit and the Distillery Unit, the appellant started using the molasses captively for further conversion into spirit under the claim of captive consumption Notification No.67/95-CE, dated 16.03.1995. Revenue objected to the same and issued show-cause notices dated 9.5.2007 and 30.10.2007, proposing confirmation of demand of duty of Rs.11,41,756/- and Rs.7,26,976/-, respectively on the ground that captive consumption notification is not available to them inasmuch as, they are not the owners of molasses. The said demand was made by invoking the longer period of limitation, for the period from July 2005 to August 2006.

3. The said notice culminated into an order passed by the original adjudicating authority, confirming the demand to the tune of Rs.12,76,783/- (Rs.8,49,878/- + Rs.4,26,905/-) along with interest and imposing penalty. The order was upheld by Commissioner (Appeals) and hence the present appeal.

4. Ld. Counsel Ms. Cynduja Crishnan submitted that the above issue, in the appellant's own case, came up for before the Tribunal and this Tribunal vide Final Order No. 42791/2018 dated 24.10.2017 held that the Notification No. 67/95-CE nowhere lays down the condition of ownership for the goods

Customs, Excise & Service Tax Appellate Tribunal

used captively. She also relied on the decision of the Tribunal, in the appellant's own case, vide Final Order No. 1330 to 1333/2008 dated 20.11.2008.

5. On the other hand, ld. AR Shri R.Subramaniyam reiterated the findings in the impugned order.

6. After hearing both sides, we find that the Tribunal, in the appellant's own case vide Final Order No.42791/2017 dated 24.10.2017, referring to the earlier final order dated 20.11.2008 has held as under:-

> *"3. ...... we find that there is no dispute about the factual position. Notification No.67/95-CE, dated 16.03.1995, which exempts all the products captively consumed for further manufacture of the excisable goods, stands denied to the appellant on the sole ground that they were not the owner of the molasses in question and as they were doing job work for their principal manufacturer, the molasses emerged during the conversion of raw material into while sugar, belonged to the principal manufacturer, in which case the benefit of the exemption notification cannot be extended to them.*
>
> *4. We note that the appellant, during the course of hearing before Commissioner (Appeals) relied very heavily upon the Tribunal's decision in the case of M/s. Thiru Arooran Sugars Ltd., Vs Commissioner of Central Excise reported as F.O.Nos.1330-1333/08, dated 20.11.2008, wherein the Tribunal held as under:-*
>
> *"The appellants are entitled to the benefit of Notification No.67/95-CE in respect of molasses used captively for the manufacture of rectified spirit and de-natured spirit. Therefore, the demand of duty in respect of the credit taken on molasses is not correct."*
>
> *5. The Commissioner (Appeals) has not followed the above decision of the Tribunal by differentiating it on the ground that in the said decision, the molasses were got from the process of their own sugarcane whereas, in the present case before him, the molasses emerge during the course of conversion of raw sugar*

Customs, Excise & Service Tax Appellate Tribunal

into white sugar. We find no merits in the above reasoning adopted by Commissioner (Appeals). It stands held in a number of decisions that ownership of the inputs, is not a criteria for deciding the admissibility of a particular notification. The Tribunal's decision in the case of M/s. Nataraj Ceramic and Chemical Indus Ltd., Vs. Commissioner of Central Excise & Customs, Rajkot reported in 2004 (164) E.L.T.111 (Tri.-Mumbai) as also in the case of M/s. Mahadev Industries Vs Commissioner of Central Excise, Belgaum reported in 2000 (115) E.L.T. 452 (Tribunal) are on the issue that ownership of the inputs has no relevance in deciding the benefits to an assessee, which are otherwise available to him. We note that Notification No.67/95-CE, nowhere lays down the condition of ownership of the goods used captively. In the absence of the same in the notification, it is not permissible to the Revenue to introduce the said condition in the notification and to deny the benefit on the said ground. As such, we are of the view that the order of the lower authorities is not sustainable on merits.

6. Apart from the above, we also agree with the learned advocate that the demand having been raised, beyond the normal period of limitation is barred by limitation, inasmuch as, the Revenue has not been able to establish any suppression, mis-statement etc., on the part of the assessee, with a malafide intention to evade payment of duty".

7. Following the above decision, we set aside the impugned order and allow the appeal with consequential benefit, if any, as per law.

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

Sulekha Beevi

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकारी / (CESTAT)
चेन्नै / CHENNAI