CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. III

EXCISE APPEAL No. 41097 of 2013
[Arising out of Order-in-Appeal No.21/2012-(SLM) dated 25.02.2013 passed by Commissioner of Central Excise (Appeals), Salem]

M/s.Sterling Biotech Ltd. **Appellant**
Sandynallah,
Ootacamund 643 237.

Vs.

The Commissioner of GST & Central Excise **Respondent**
Salem Commissionerate,
No.1, Foulks Compound,
Anaimedu,
Salem 636 001.

APPEARANCE:

Shri M. Karthikeyan, Advocate
For the Appellant

Shri Arul C. Durairaj, Superintendent (Authorized Representative)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing: 23.11.2021
Date of Pronouncement: 25.11.2021

FINAL ORDER No. 42452 / 2021

The appellants are registered with the Central Excise Department and are engaged in the manufacture of Gelatine which is a dutiable good. It was alleged by the department that the appellant is also manufacturing exempted product namely 'sludge'. It appeared to the department that since the appellants have used common inputs for manufacture of dutiable product (Gelatine) and exempted product (Sludge) and did not maintain separate accounts as required under Rule 6 (3) of Cenvat Credit Rules, 2004, they are liable to pay an amount equal to 10% / 5% of the total value of the exempted sludge cleared by them for the period 01.02.2007 to 30.09.2011 along with interest. Show cause notice dated 22.02.2012 was issued to the appellant proposing to demand the above amount along with interest and also for imposing penalties. After due process of law, the original authority confirmed the demand, interest and penalties against which the appellants preferred appeal before the Commissioner (Appeals). The demand for the period prior to 10.05.2008 was set aside by the Commissioner (Appeals) and the demand, interest and penalty for the subsequent period was upheld. Aggrieved by such order, the appellants are now before the Tribunal.

2. Ld. Counsel Shri M. Karthikeyan appeared and argued for the appellant. He submitted that the appellant is engaged in manufacture of Gelatine, Phosphoryl (A), Phosphoryl (B) in their unit situated at Ooty and during the manufacturing activity, waste arising from such manufacture is drained into Effluent Treatment Plant. The solid waste removed from the Effluent Treatment plant is 'sludge' and it is removed on a daily basis to their dumping yard situated at Karaimadai, Mettupalayam wherein it gets naturally dried for a few months. The dried sludge is crushed and packed in small bags and sent to fertilizer manufacturers.

3. The demand is raised in the SCN alleging that the appellant has manufactured dutiable and exempted products. The department has taken the view that the 'sludge' is manufactured by the appellant and it is an exempted product. He argued that the appellant has consciously not manufactured any waste/sludge. The waste that arises during the course of manufacture and treated at the Effluent Plant gets dried up and forms into sludge. There is no conscious effort on the part of appellant to manufacture sludge and therefore it cannot be considered as an exempted goods manufactured by the appellant.

4. The demand for the period prior to 10.05.2008 has already been set aside by the Commissioner (Appeals). The demand after 10.05.2008 has been upheld by the Commissioner (Appeals) holding that an amendment has been introduced by way of inserting an *Explanation* in Section 2 (d) of the Central Excise Act, 1944 while giving meaning of "excisable goods". The said *Explanation* reads as under :

> "excisable goods" means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt ;
>
> ***Explanation.* –** for the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

The appellants having not manufactured 'sludge', but merely because it was sold, it cannot be said that it is an exempted goods manufactured by the appellants. The issue has been considered and decided in the case of *ITC Ltd. Vs CCE Salem* - 2014 (303)

ELT 557 (Tri.-Chennai). The said decision was followed by the Commissioner (Appeals) to set aside the demand prior to 10.05.2008. However, Commissioner (Appeals) failed to notice that the period involved in the said case was from 10.05.2008 to 30.11.2008 and the Tribunal had set aside the demand after considering the amendment made in Section 2 (d) with effect from 10.05.2008.

5. The above decision was followed in the case of *ITC Ltd.* (supra) was followed by the Tribunal in the case of *Tamil Nadu Newsprint & Papers Ltd*. Vs CCE Trichy - 2018 (7) TMI 674 -CESTAT Chennai wherein the demand for clearance of sludge was set aside. He also relied upon the case of *Magnum Ventures Vs CCE Ghaziabad* - 2014 (303) ELT 226 (Tri.-Del.) and in the case of *JSW Steel Ltd. Vs CCE Navi Mumbai* – 2016 (332) ELT 189 (Tri.-Mumbai). He prayed that the appeal may be allowed.

6. Ld. A.R Shri Arul C. Durairaj appeared for the Revenue who supported the findings in the impugned order.

7. Heard both sides.

8. The issue to be decided is whether the appellant is liable to pay the amount equal to 10% / 5% of the value of the exempted goods / 'sludge' removed by them for the period from 10.05.2008 to 30.09.2011 as required under Rule 6 (3) of CCR, 2004.

9. The demand has been raised on the view that the sludge removed is an exempted goods manufactured by the appellants. The appellant does not consciously manufacture any waste.

During the course of manufacture, the waste that arises is drained into the Effluent Treatment Plant. Thus, waste removed from the Effluent Treatment Plant forms sludge and is removed on a daily basis to a dump yard from where it gets dried and is thereafter sold to fertilizer manufacturers. The appellant has to comply with the pollution control requirements and therefore maintain the Effluent Treatment Plant and remove the waste as per the effluent norms. A manufacturer would be happy when there is less waste or no waste at all since the burden of maintaining the effluent treatment plant and the transportation of the sludge etc. can be minimized. No manufacturer would consciously manufacture waste. For these reasons, it cannot be said that the waste / sludge is an 'exempted goods' manufactured by the appellant. On such score, Rule 6 (3) of CCR 2004 does not come into application and the demand of 10% / 5% of the value of the sludge removed by the appellant cannot sustain.

10. The said issue stands considered by the Tribunal in the case of *ITC Ltd.* (supra). In fact, the Commissioner (Appeals) has cited the said decision to set aside the demand prior to 10.05.2008. It has to be stated that even after 10.05.2008, though the *Explanation* to Section 2(d) states that any article, material or substance which is capable of being bought and sold for a consideration will also fall within the definition of "goods", in the present case, the appellants having not manufactured the waste consciously, it cannot be considered as an 'exempted goods' falling under Rule 6 (3) of CCR 2004. In the case of *ITC Ltd*.

(supra), the Tribunal had set aside demand subsequent to 10.05.2008 also, holding that the waste cannot be considered as manufactured product. The discussions as noticed in ITC case (supra) are as under :

> **"5.** The learned Authorized Representative for the Revenue submits that after the amendment of Section 2(d), by adding explanation the said section reads as under :-
>
> "(d) "excisable goods" means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt.
>
> *Explanation.* - For the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable."
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> **6.** Sludge is being bought and sold. He submits that the very fact that sludge is exempted from excise duty shows that it is covered by Central Excise Tariff. And therefore credit proportional to the value of sludge cleared should be reversed. His argument is that in a manufacturing process if two products are emerging and if both are sold for a consideration there is no reason to consider one as excisable and other as not excisable.
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> **7.** We have considered the submissions of both sides. We find merit in both the arguments raised by appellant. Sludge emerging from effluent treatment plant in the nature of waste cannot be considered a manufactured product in view of various decisions of the Hon'ble Apex Court in the similar matters. Further there cannot be a demand to reverse any Cenvat credit for the reason that a part of the input is covered in the waste that arises. Detailed reasons are given in Final Order No. 40052/2013, dated 26-2-2013 (for the period Dec'08 to Sep'09) in appellant's own case. So this appeal is allowed by setting aside the impugned orders of lower authorities. Stay application also stands disposed of."

11. In the case of M/s.*Tamil Nadu Newsprint & Papers Ltd*. (supra), the Tribunal observed as under :

> "6. After hearing both sides, and on perusal of the records, we note that the crux of the dispute in the present case is regarding the effluent sludge arising in the Effluent Treatment Plant. The sludge arising during the course of manufacture of paper in the appellant's factory is required to be treated in the effluent treatment plants as per the pollution control norms. The sludge, which arises is cleared outside the factory for some consideration but no excise duty is paid on such

> clearance since the same is exempted in terms of notification No.76/86-CE. The Revenue has taken a view that the appellant is required to reverse an amount at the rate of 10% and 5% of the value of sludge cleared as per Rule 6(3) of the Cenvat Credit Rules. It is evident on the facts of the case that the sludge which arises is nothing but a waste, which has arisen in the process of manufacture. The same may be excisable and that is the reason the same was granted exemption vide exemption notification (supra). But, the issue in the present case is not whether sludge is excisable but whether the appellant is liable to reverse an amount as required under Rule 6(3). We note that an identical issue came up before the tribunal in the case of M/s. Magnum (supra), which dealt with the sludge formation in Effluent Treatment Plant in respect of the appellants paper manufacturing factory. The Tribunal held that there is no requirement for such reversal. Similar view has been held by the Tribunal in the case of M/s. ITC Ltd (supra), wherein, the Tribunal held that the sludge emerging from Effluent Treatment Plant is in the nature of waste and cannot be considered as a manufactured product. By following the decision (supra), we find that there is no justification for ordering reversal under Rule 6(3) of Cenvat Credit Rules, 2004. In the result, the impugned orders are set aside and appeals are allowed. EH application is also disposed. "

12. After appreciating the facts and evidence on record, and following the decisions cited supra, I am of the considered view that demand cannot sustain. Impugned order is set aside. Appeal is allowed with consequential relief, if any.

(Pronounced in open court on 25.11.2021)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

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