**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

EXCISE APPEAL No.41172 of 2017

(Arising out of Order-in-Original No.14/2017 (CE-Commissioner) dated 08.03.2017 passed by Commissioner of Central Excise, salem]

M/s.Sakthi Sugars Ltd. **Appellant**
Sakthi Nagar,
Bhavani Taluk,
Erode District.638 315

VERSUS

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

APPEARANCE :

Shri M.N. Bharathi, Advocate
For the Appellant

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

**CORAM: HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER(TECHNICAL)**

**DATE OF HEARING : 04.02.2022
DATE OF PRONOUNCEMENT:15.02.2022**

FINAL ORDER No. 40068 / 2022

Order PER: SULEKHA BEEVI C.S

Brief facts of the case are that the appellants are engaged in manufacture of sugar and are also availing facility of cenvat credit on inputs, capital goods and inputs services. It was noticed by the department that they had not maintained separate accounts for the receipt, consumption and inventory of inputs meant for use in the manufacture of both dutiable and exempted final products so as to restrict the cenvat credit availed only to the proportionate quantity of inputs used in the dutiable final products. Neither had they paid an amount equal to 6% / 7% of the value of the exempted final product for their clearances made during the period from 01.12.2014 to 30.06.2015. Show cause notice was issued proposing to recover the wrongly availed cenvat credit in terms of Rule 6 (3) and Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A (1) of Central Excise Act, 1944 along with interest and also proposing to impose penalties. After due process of law, the original authority confirmed part of the demand, interest for the period 01.03.2015 to 30.06.2015 along with interest and imposed penalty. Hence this appeal.

2. On behalf of the appellant, Ld. Counsel Shri M.N. Bharathi appeared and argued the mater. He submitted that the allegation raised by the department is that appellants are not eligible to avail cenvat credit on the inputs/input service used for the manufacture of exempted final product, namely 'Bagasse'. He submitted that Bagasse is an agricultural waste that arises in the course of manufacture and that appellant has not consciously manufactured Bagasse. There being no manufacturing process, Bagasse is not excisable. Department has erroneously concluded that Bagasse is an exempted final product and that the appellant has used inputs for manufacture of dutiable and exempted products. On this conclusion, the appellant has been directed to pay 6% / 7% of the value of waste / bagasse sold by them during the disputed period.

3. The said issue whether Bagasse can be considered as an exempted final product manufactured by assessee was considered by various Courts. He submitted that the Hon'ble Supreme Court in the case of *Union of India Vs DSCL Sugar Ltd*. - 2015 (322) ELT 769 (SC) has disposed of a batch of appeals wherein the issue that was considered was whether the Bagasse can be considered a final product emerging out of manufacturing activity. It was held by the Apex Court that Bagasse is not excisable as there is no manufacturing process involved and that Rule 6 of CCR 2004 is not applicable.

4. He submitted that Hon'ble Allahabad High Court in the case of *Balrampur Chini Mills Ltd. Vs UOI* - 2019 (5) TMI 972 has held that Bagasse cannot be considered as final product consciously manufactured by an assessee.

5. In the case of *Arignar Ana Sugar Mills Vs CGST & CE Tiruchirapalli* 2019 (8) TMI 419 CESTAT Chennai, similar view was taken. He prayed that the appeal may be allowed.

6. Ld. A.R Shri Arul C. Durairaj appeared for the department. He supported the impugned order.

7. Heard both sides.

8. The issue to be decided is whether the appellants are liable to pay 6% / 7% of the value of Bagasse sold by them for consideration.

9. The Hon'ble Supreme Court in the case of *UOI Vs DSCL Sugar Ltd.* (supra) had an occasion to consider the very same issue wherein it has been held as follows :

> "**8.** However, before the aforesaid fiction is to be applied, it is necessary that the process should fall within the definition of "manufacture" as contained in Section 2(f) of the Act. The relevant portion of amended Section 2(f) reads as under :
>
> Section 2(f) - "manufacture" includes any process -
>
> (i) incidental or ancillary to be completion of a manufactured product;
>
> (ii) which is specified in relation to any goods in the section or Chapter notes of [The First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to [manufacture; or]
>
> (iii) which in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;
>
> and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production of manufacture on his own account;"
>
> **9.** The Revenue sought to cover the case under sub-clause (ii) as per which the process which is satisfied in relation to any goods in the Section or Chapter notices of the First Schedule to the Central Excise Tariff Act, 1985 would amount to 'manufacture'. Here again, fiction is created by including those goods as amounting to manufacture in respect of which process is specified in the Section or Chapter notices of the First Schedule.
>
> **10.** In the present case it could not be pointed out as to whether any process in respect of Bagasse has been specified either in the Section or in the Chapter notice. In the absence thereof this deeming provision cannot be attracted. Otherwise, it is not in dispute that Bagasse is only an agricultural waste and residue, which itself is not the result of any process. Therefore, it cannot be

> treated as falling within the definition of Section 2(f) of the Act and the absence of manufacture, there cannot be any excise duty.
>
> **11.** Since it is not a manufacture, obviously Rule 6 of the Cenvat Rules, 2004, shall have no application as rightly held by the High Court."

10. Following the decision of the Hon'ble Apex Court (supra) as well as the decisions cited by the Ld. Counsel for the appellant, we are of the considered opinion that the demand cannot sustain. The impugned order is set aside. Appeal is allowed with consequential relief, if any.

(Pronounced in court on 15.02.2022)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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