

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No.40190 of 2015

(Arising out of Order-in-Original No. 02/CE/COMMR/2014 dated 10.10.2014
passed by Commissioner of Central Excise, Tirunelveli)

M/s. Dharani Sugars & Chemicals Ltd.,

... Appellant

Dharani Nagar,
Athuvazhi 627 760
Vasudevanallur

VERSUS

The Commissioner of CGST & Central Excise

...Respondent

Central Revenue Building,
NGO 'A' Colony,
Tirunelveli 627 007.

APPEARANCE :

Shri. M.N. Bharathi, Advocate, for the Appellant
Shri. N. Satyanarayanan, Authorised Representative for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40560/2024

DATE OF HEARING : 27.05.2024

DATE OF DECISION : 27.05.2024

Per Ms. Sulekha Beevi. C.S

Brief facts are that the appellant is engaged in the manufacture of Sugar (Tariff Item 1701 11 90), Molasses (Tariff Item 1703 10 00), Denatured Spirit and Denatured Anhydrous Alcohol (Tariff Item 2207 20 00), Carbon-di-Oxide (Tariff Item 2811 2190) and Rectified Spirit, Impure Spirit, Extra Neutral Alcohol. The Appellant manufactured

Sugar and Molasses in the Sugar Mill Unit. Items such as Rectified Spirit, Impure Spirit, Anhydrous Alcohol, Extra neutral Alcohol, Denatured Spirit, Denatured Anhydrous Alcohol and Carbon-di-Oxide are manufactured in the Distillery Unit. Denatured Spirit, Denatured Anhydrous Alcohol and Carbon-di-oxide are excisable goods while the other items produced in the distillery unit namely Rectified Spirit, Impure Spirit, Anhydrous Alcohol, Extra neutral Alcohol are non-excisable as they do not find place in the First Schedule to the Central Excise Tariff Act, 1985.

2. The Molasses manufactured in the Sugar Mill Unit is removed to the Distillery unit without payment of duty, availing notification benefit No. 67/95-CE dated 16-03-1995 for use in the manufacture of the above said non-excisable goods. The department was of the view that the benefit of the Notification No.67/95 is available only when the final products suffer duty and the appellant is not eligible to avail the benefit of notification for the reason that the above mentioned products are non excisable goods, as per Section 2 (d) of the Central Excise Tariff Act 1944. In terms of Rule 2 (h) of CCR, 2004 these are not final products and therefore, appellant is not eligible to avail the benefit of said notification and are liable to pay duty of excise on all the clearances of molasses (intermediate product) made from sugar unit and removed to distillery unit and used in the manufacture of non excisable goods. The appellant is liable to pay duty on the quantity of molasses cleared for captive consumption and used in the manufacture of non excisable goods in their distillery units.

3. In addition to the use of molasses produced within their unit, the appellant also procures molasses from outside on payment of duty and is availing credit on the same treating these molasses as inputs. Apart from molasses, the appellant has availed credit on various other inputs and input services which are used in the manufacture of non excisable goods. The appellant therefore, is liable to reverse the credit taken on such inputs/input services.

4. Further, the appellant has taken credit on capital goods used in the distillery unit which are used in the manufacture of above non excisable goods. The appellant is not eligible to avail credit on capital goods used exclusively in the manufacture of non excisable goods.

5. The appellant has availed credits on inputs and input services used in generation of electricity and steam which is used in the manufacture of above excisable goods. The appellant is not eligible to avail such credit.

6. It appeared to the department that the appellant is not eligible to avail the exemption provided in Notification 67/95 and is liable to pay duty on the molasses manufactured and cleared for captive consumption. So also, they are not eligible to take credit on molasses procured from outside, other inputs, input services and capital goods used in the manufacture of said non excisable goods.

7. On the basis of the above the appellant was issued three separate show cause notices for the period April 2012 to September 2012, October 2012 to March 2013 and April 2013 to September 2013 proposing to demand duty on molasses captively consumed and used

in manufacture of non excisable goods along with interest and for imposing penalties. The show cause notice also proposed to deny the credit availed on inputs/input services/capital goods used for manufacture of non excisable goods and also on inputs/ input services used for generation of electricity and steam used for manufacture non excisable goods. After due process of law, the original authority confirmed the demand of duty along with interest and imposed penalties. The original authority also denied the CENVAT credit as proposed in the show cause notice and ordered for recovery of the same along with interest and imposed penalties in this regard also. The amount paid by the appellant was ordered to be appropriated. Aggrieved by such order, the appellant is now before the tribunal.

8. The Ld. Counsel Shri. M.N. Bharati appeared and argued for the appellant. They submitted that the issue is no more *res integra* in view of the decision in their own case vide Final Order No.4789-4799/2014 dated 20.11.2014. The said decision of the Tribunal was affirmed by the Hon'ble Supreme Court by dismissing the appeal filed by the department as reported in 2022 (379) ELT 556 (S.C.). Further the said decision was followed by the Tribunal in the case of EID Parry India Limited versus Commissioner of GST and CE by Final Order No. 40464/2024 dated 25.04.2024.

9. It is explained that the department has denied the benefit of Notification No.67/95-CE dated 16.03.1995 in regard to the molasses captively consumed in the manufacture of undenatured ethyl alcohol (rectified spirit), neutral alcohol etc. The department has taken the view that the rectified spirit and extra neutral alcohol are non excisable

goods whereas the appellant has submitted that these are excisable but exempted goods. The very same issue was considered by the Tribunal in the appellant's own case for the earlier period. It is submitted that rectified spirit and extra neutral alcohol were classified under subheading 220490 prior to 01.03.2005 at nil duty. After restructuring of Tariff with effect from 01.03.2005, rectified spirit, extra neutral alcohol etc. were cleared without payment of duty as exempted goods by Notification No.03/2005-CE dated 24.02.2005 and Notification No. 12/2012 dated 17.03.2005. The adjudicating authority has denied the benefit of Notification No. 67/2005 on the view that after the restructuring of Tariff, the rectified spirit and extra neutral alcohol were not mentioned in the Tariff. It has been consistently held by Tribunals and High Courts that after restructuring of Tariff, no item has been excluded from the Tariff. The Board Circular No. 808/5/2005-CX dated 25.02.2005 was also relied. It has been clarified by Board that rectified spirit and extra neutral alcohol are covered under subheading 22 07 2000 after restructuring of the Tariff. Thus, it will be covered under Chapter 22. The Final Order dated 20.11.2014 passed by Tribunal in the appellant's own case for the previous period has considered the issue in detail and set aside the demand. Though the appeal was filed by the department before the Hon'ble Apex Court against such order, the appeal has been dismissed affirming the decision of the Tribunal. It is prayed that this appeal may be allowed.

10. The Ld. AR Shri. N. Satyanarayan, supported the findings in the impugned order.

11. Heard both sides.

12. The issue to be decided is whether appellant is eligible for the benefit of Notification No.67/95-CE dated 16.03.1995 and also whether the credit availed on inputs/input services / capital goods are eligible.

13. The very same issues were considered in the appellant's own case. The findings of the Tribunal in Final Order No.40789-40799/2014 dated 20.11.2014 reads as under:-

8.1 For the proper appreciation of the case, we take up the facts from Appeal No. E/41188/2014 in the case of M/s. Rajshree Sugars and Chemicals Ltd. Vs. CCE, Puducherry. The adjudicating authority observed that Denatured Ethyl Alcohol were dutiable and removed from the factory on payment of appropriate excise duty and the non-excisable goods i.e. varieties of Denatured Ethyl Alcohol including Rectified spirit were removed on payment of an amount equivalent to 6%, on the invoice value in terms of Rule 6 of the CENVAT Credit Rules, 2004. Ethyl Alcohol mainly has an intoxicating agent in alcohol-based liquor for human consumption. Prior to 1.3.2005 of Tariff restructuring from 6 digit to 8 digit Heading No. 2204.90 of the CETA covers Rectified Spirit and ENA, NIL rate of duty. The appellants were eligible to avail the CENVAT credit on the molasses captively used in the manufacture of dutiable and exempted products. The appellants reversed the amount under Rule 6 of the CENVAT Credit Rules, 2004 at the time of clearance of the exempted Denatured Ethyl Alcohol including Rectified spirit. According to Revenue, after restructuring of the Tariff from 6 digit to 8 digit, Denatured Ethyl Alcohol would become non-excisable and therefore the appellants are not eligible to avail the

benefit of the exemption Notification No. 67/95-CE (supra) in respect of molasses used in the manufacture of Denatured Ethyl Alcohol including Rectified spirit.

8.2 It is appropriate to look into the changes of Chapter 22 and the Notification as under:-

(I) As on 1st March, 1994, Chapter 22 covers beverages, vinegar and spirit. Note to Chapter 22 states that this Chapter does not cover alcoholic liquors for human consumption. The Tariff description of Heading No. 22.04 is reproduced below:-

<i>Heading No.</i>	<i>Sub-heading</i>	<i>Description of goods</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>22.04</i>	<i>2204.00</i>	<i>Ethyl Alcohol of any strength whether denatured or not, but not including alcoholic liquor for human consumption</i>

Rectified Spirit and ENA are not fit for human consumption and covered by exemption Notification No. 2/94-CE dated 1.3.1994 (Sl. No. 32 of the Table) exempted all goods, other than Ethyl Alcohol of any strength, denatured under sub-heading 2204.00 nil rate of duty.

(II) Prior to 1.3.2005, Note 1 of Chapter 22 provides that "this Chapter does not cover alcoholic liquors for human consumption". The relevant portion of Heading No. 22.04 is reproduced below:-

<i>Heading No.</i>	<i>Sub-heading</i>	<i>Description of goods</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>

22.04		<i>Ethyl Alcohol of any strength whether denatured or not, but not including alcoholic liquor for human consumption</i>
	2204.10	<i>-Denatured ethyl alcohol of any strength</i>
	2204.90	<i>- Other NIL</i>

Rectified Spirit and ENA covered under Sub-heading No. 2204.90, NIL duty.

(III) After re-structuring of Tariff from 6 digit to 8 digit, with effect from 1.3.2005, Note 4 of Chapter 22 states that "this Chapter does not cover alcoholic liquor for human consumption". Heading No. 2204 is shown as blank. Heading 2207 covers "ethyl alcohol and other spirits, denatured of any strength". The relevant portion of Heading 2207 is reproduced below:-

<i>Heading No.</i>	<i>Description of goods</i>	<i>Rate of Duty</i>
<i>(1)</i>	<i>(3)</i>	<i>(4)</i>
2207	<i>Ethyl Alcohol and other spirits, denatured of any strength</i>	
2207 10	---	
2207 10 11	---	
2207 10 19	---	
2207 10 90	---	
2207 20 00	<i>- Ethyl Alcohol and other spirits, denatured of any strength</i>	12%

(IV) Notification No. 3/2005-CE dated 24.2.2005 (Serial No. 14 of the Table) "all spirits (other than denatured ethyl alcohol of any strength)" under sub-heading No. 2207 20 00 extended nil rate of duty.

(V) Notification No. 3/2005-CE dated 24.2.2005 was superseded by Notification No. 12/2012-CE dated 17.3.2012. Sl. No. 40 of the Table

appended to Notification No. 12/2012 "all spirits (other than denatured ethyl alcohol of any strength)" under sub-heading 2207 20 00, extended nil rate of duty.

(VI) In the present case, the Issue Involved is eligibility of Notification No. 67/95-CE (supra), which is as under:-

"In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1994) read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), (hereinafter referred to as the said Special Importance Act), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts -

(i) capital goods as defined in the CENVAT Credit Rules, 2002 manufactured in a factory and used within the factory of production;

(ii) goods specified in column (1) of the Table hereto annexed (hereinafter referred to as 'inputs') manufactured in a factory and used within the factory of production in or in relation to the manufacture of final products specified in column (2) of the said Table;

From the whole of the duty of excise leviable thereon which is specified in the Schedules to the Central Excise Tariff Act, 1985 (5 of 1986) or additional duty of excise leviable thereon, which is specified in the Schedule to the said Special Importance Act. Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products which are exempt from the whole of the duty of excise or additional duty of excise leviable thereon or

are chargeable to nil rate of duty, other than those goods which are cleared -

- (i) xxxx xxxxx xxxxx xxxxx
- (ii) xxxx xxxxx xxxxx xxxxx

(vi) by a manufacturer of dutiable and exempted final products, after discharging the obligation prescribed in rule 6 of the CENVAT Credit Rules, 2001.

Explanation *****

TABLE

Description of Inputs	Description of final products
(1)	(2)
All goods falling under the First Schedule to the Central Excise Tariff Act 1985 (5 of 1986) other than (light diesel oil, high speed diesel oil) and motor spirit, commonly known as petrol.	All goods falling under the First Schedule to the Central Excise Tariff Act 1985 (5 of 1986), other than matches.

8.3 We find that the present dispute is emerged due to restructuring of the Tariff from 6 digit to 8 digit. CBEC vide Circular No. 808/5/2005-CX dated 25.2.2005 regarding implementation of Tariff from 6 Digit to 8 Digit, clarified as under:-

"Implementation of the Central Excise Tariff (Amendment) Act, 2004 (8- Digit Classification Code)- Clarification regarding.

I am directed to draw your attention to this Department's Notification No.6/2005-CE (NT) dated 24.2.2005, Issued from F.No.4/3/2002-CX.I (Part-II), which notifies that the Central Excise

Tariff (Amendment) Act, 2004 will come into force with effect from 28th February 2005. The said Act is being uploaded on the CBEC website, (www.cbec.gov.in).

2. Accordingly, all the field officers must ensure implementation of the amended Tariff Act (including 8-digit classification code in It's new 1 & 2nd Schedules) from 28.02.2005. Trade should also be suitably informed immediately and guided in the matter so that the transition from 6-digit to 8-digit classification code is smooth without any difficulty to the trade in day-to-day clearances.

3. Notification No. 3/2005-CE dated 24th February 2005 has been Issued to preserve the existing duty rates on specified commodities where effective rates were built into the six-digit tariff, but are now subject to different tariff rates in the 8-digit code. This is subject to any subsequent changes.

8.4 In the present case, there is no dispute that prior to 28.2.2005, Rectified Spirit and ENA manufactured by the appellant were covered under sub-heading No. 2204.90, NIL rate of duty. After amendment of Tariff (8 Digit Classification Code), Heading 22.04 would correspond to Heading No. 22.07. In the above Board Circular, it has been clarified that Notification No. 3/2005-CE dated 24.2.2005 was issued to preserve the existing duty rate. So, it is clearly evident that the Rectified Spirit existing NIL rate of duty under Sub-heading No. 2204.90 has been covered under Serial No. 14 of the Table appended to Notification 3/2005-CE (supra). In view of the above Board Circular, we find merit in the submission of the learned Advocate that with

effect from 28.2.2005, Rectified Spirit and ENA are exempted goods, covered under Notification No.3/2005-CE. The Hon'ble Allahabad High Court in the case of *Gularia Chini Mills Vs. Union of India* 2014 (34) STR 175 (All.) while dealing with bagasse, which emerged as a residue of sugarcane used as fuel in factory for manufacture of final product would be treated as exempted goods in the context of restructuring of Tariff of 6 digit to 8 digit, observed as under:-

"30. It is relevant to mention here that a notification, bearing No. 7/2005-Central Excise (N.T.) was published in Part II, Section 3, sub-section (1) of the Gazette of India, Extraordinary, dated 24-2-2005, which reads as under:

"In exercise of the powers conferred by Section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules to amend all the rules made under the said section and all the notifications Issued under the said rules and for the time being in force on the date of commencement of the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), except as respects things done or omitted to be done before such amendments, namely:-

1.(1) These rules may be called the Central Excise Removal of Difficulties) Rules, 2005

(2) They shall come into force on the date of the commencement of the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005).

2. In each of the rules made under Section 37 of the Central Excise Act, 1944 (1 of 1944), and in each of the notifications issued under these rules, for any reference to the Chapter, heading or sub-heading of the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as the case may be, relating to any goods or class of goods, wherever referred to in the said rules or notifications, the corresponding reference to the Chapter, heading or sub-heading or tariff item, of the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as amended by the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005) shall be deemed to have been substituted.

No. 4/3/2002-CX.1 (Pt.II)

Abhay Kumar Srivastav

*Deputy Secretary to the Government of
India*

Note: This notification intends to take care of the technical changes adopted in the numbering scheme for Central Excise classification through the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005). These amendments do not involve any substantive changes in the existing rules, so the particulars of each rule have not been indicated."

Furthermore, during debate in Lok Sabha on the said Central Excise Tariff (Amendment) Bill, 2004, the then Hon'ble Minister of Finance in regard to the purpose of Introduction of eight-digit classification has stated that "the purpose of the Bill is very limited. On the custom side, we already have an eight-digit classification. It is, therefore, necessary that on the Excise side

also we have the same eight-digit classification. What we have found is that eight-digit classification helps both trade and revenue department to Identify a particular product and heading under which it falls. Immediately, the number of disputes comes down very sharply....".

31. A perusal of the 'Note' appended below the Notification dated 24-2-2005 as well as the statement made by the Hon'ble Finance Minister in Parliament, as referred to above, clearly establishes that the notification has taken care of the technical changes adopted in the numbering scheme of 6 digits Central Excise classification, which has been aligned with the Customs Tariff of 8 digits with effect from 28-2- 2005.

32. The definition of 'excisable goods' given in Section 2(d) means the goods, which are specified in the First or Second Schedule and which are subjected to duty of excise, can only be treated as excisable goods. A proposition has also been accepted by the Commissioner in its findings. A perusal of Section 2(d) of Central Excise Act shows that the excisable goods are only those goods which are subjected to duty of excise as specified in the First Schedule or Second Schedule of the Central Excise Tariff Act. Since Column of rate of duty is blank, therefore, in view of Section 2 of the Central Excise Tariff Act, 1985, electrical energy is not being subjected to excise duty for the purposes of being excisable goods under Section 2(d) of the Central Excise Act. Furthermore, Rule 6 of the 2004 Rules, which is applicable only to excisable goods, can alone be treated as exempted goods for

the purposes of Rule 6(3) of 2004 Rules, does not apply to electrical energy."

8.5 *It is clear from the decision of the Hon'ble Allahabad High Court in the case of Gularia Chini Mills (supra), that the restructuring of Tariff from 6 digit to 8 digit with effect from 1.3.2005 would not involve any substantive change in the existing rules. It was taken care of the technical changes adopted in the numbering scheme for central excise classification through the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005). From the Legislative changes of Chapter 22 as mentioned above, it is clear that Chapter 22 does not cover alcoholic liquor for human consumption. Department accepted that prior to 1.3.2005, Rectified spirit was nil rate of duty under sub-heading No. 2204.90. After the introduction of 8 digit classification with effect from 1.3.2005, Heading 2207 covers ethyl alcohol and other spirits, denature, of any strength. On perusal of the impugned order, we find that the appellant contended before the Adjudicating authority that Rectified Spirit with 95% strength was removed from the factory. It cannot be alcoholic liquor for human consumption. Both Rectified Spirit and Denatured Ethyl Alcohol are only varieties of Ethyl Alcohol As per Dictionary meaning, Rectified Spirit is distilled Ethanol with only 4.43% water and it is nothing but Ethyl Alcohol with highly concentrate Ethanol and cannot be fit for human consumption. Normally, Ethyl Alcohol are ranging from 10% to 40% in liquor. In any event, Rectified Spirit (95))s more akin to denatured Ethyl Alcohol and both are industrial alcohol falling under Heading No. 2207 of HSN. In this perspective, if we look into Notification No. 3/2005-CE (supra), as*

claimed by the appellants, the words "all spirits" in Serial No. 14 of the Table of the said Notification have wide amplitude and it includes irrespective of "whether denatured or not". So, we are of the view that Rectified Spirit and ENA are covered by exemption Notification.

8.6 *The Tribunal in the case of Ugar Sugar Works Vs. CCE 2007 (214) ELT 33 held that with effect from 1.3.2005, Rectified spirit along with denatured spirit would cover under sub-heading No. 2207 2000 and it cannot be said that with effect from 1.3.2005, it became non-excisable. The relevant portion of the said decision is reproduced below:-*

"4. The appellant manufactures Sugar and Molasses. From the molasses, Rectified spirit is produced. Rectified spirit Is denatured and de-natured spirit is also manufactured. The appellant takes Cenvat credit on the molasses used in the manufacture of Rectified Spirit/Denatured Spirit. It is the contention of the Revenue that w.e.f. 1-3-2005, Rectified Spirit has become non-excisable and, therefore, no Cenvat credit could have been availed by the appellant. Apart from molasses, furnace oil is also used in the manufacture of Rectified Spirit as a fuel. Therefore, Revenue is also aggrieved that the Cenvat credit availed on furnace oil is also not admissible. The appellant has contended that prior to 1-3- 2005, Rectified Spirit was covered under Chapter sub-heading 2204.90 and Denatured Spirit was covered under CSH 2204.10. However, in the restructured Tariff, both Rectified Spirit and Denatured Spirit are covered under the same Chapter sub-heading 2207 20 00. Therefore, the

contention that Rectified Spirit has become non-excisable w.e.f. 1-3-2005 is totally wrong. We find that even though the molasses is first converted to Rectified Spirit, while converting the same, Carbon Di-Oxide is first manufactured and the same is cleared on payment of duty. Further, part of the Rectified Spirit is converted into Denatured Spirit which is also sold on payment of duty. Therefore, it cannot be said that Molasses is used only in the manufacture of Rectified Spirit. In other words, Molasses is used as a common input in the manufacture of exempted Rectified Spirit as well as dutiable Carbon Di-Oxide and Denatured Spirit. Hence, in terms of Rule 6 of Cenvat Credit Rules, if the credit on molasses used in or in relation to the manufacture of the said Rectified Spirit is reversed, there is no violation of any provisions of law and the credit taken on Molasses cannot be denied. This issue is covered by the decision of this Bench in the case of NCS Distilleries/Estates Pvt. Ltd. v. CCE, Visakhapatnam 2007 (207) E.L.T. 400 (Tri.- Bang.) and the Final Order Nos. 56 to 59/2007 dated 30-11- 2006 [2007 (212) E.L.T. 234 (Tribunal)] in the case of The Godavari Sugar Mills Ltd. & Others v. CCE. It is on record that the appellants had reversed total Cenvat credit of Rs. 1,22,49,550/- attributable to the molasses used in or in relation to the manufacture of 3073155 Itrs. of Rectified Spirit cleared without payment of duty."

8.7 *In the case of CCE Vs. M/s Bazpur Cooperative Sugar Factory Ltd. 2014-TIOL-1733-HC-UKHAD, the Hon'ble Uttarkhad High Court held that Rectified spirit attracting nil rate of duty and waste/storage*

loss of Rectified Spirit, credit availed on duty paid on molasses is required to be reversed under Rule 6(1) of the CENVAT Credit Rules, 2004. In that case, while scrutinizing the return of the assessee for the month from July 2005 to March 2006, it was observed that the stock was short by 33172.80 bulk litres. It was shown as wastage. The Hon'ble High Court in favour of the Revenue held that CENVAT credit attributable to the quantity of inputs (molasses) used in or in relation to the manufacture of the exempted final products (Rectified spirit), attracting nil rate of duty and which was reported as wastage/storage loss should be reversed as per provisions of Rule 6(3) of the CENVAT Credit Rules, 2004. In the case of Godavari Sugar Mills Ltd. Vs. CCE 2007 (212) ELT 234 it was held that molasses used for manufacture of Rectified spirit and denatured spirit, part of Rectified spirit converted into denatured spirit which is dutiable, benefit of Notification No. 67/95-CE is available provided the manufacturer discharges the obligation prescribed under Rule 6 of the CENVAT Credit Rules. In that case, it was observed that the Rectified spirit covers under Heading No.22.04 of the Tariff (presently 2207 2000).

8.8 The adjudicating authority observed that Section 2(d) of the Central Excise Act, 1944 defines excisable goods to refer only to those goods being leviable to central excise duty, denatured ethyl alcohol virtually changed into non-excisable goods since 1.3.2005. It has been observed that Note 4 of Chapter 22 of the Tariff excludes liquor for human consumption. Rectified spirit and other varieties of denatured ethyl alcohol being only undiluted form of liquor for human consumption and usable for potable purposes are certainly excluded

from the purview of Chapter 22 thereby do not remain as excisable goods. We find that in the present case, the stand taken by the Revenue that prior to 1.3.2005, Rectified spirit was not for human consumption and therefore it was classified under heading 2204 as nil rate of duty. So, after 1.3.2005, it cannot be said that it is fit for human consumption. It is further observed that the exemption Notification No. 3/2005-CE would be extendable only to Heading No. 2207 2000 "denatured ethyl alcohol and other denatured spirits, of any strength". It has also observed that though the notification refers to "all spirits" would be read with reference to sub-heading No. 2207 2000. In our considered view, exemption Notification would be read independently. We have already discussed above that the expression "all spirits" has a wide meaning, irrespective of whether denatured or not. Taking into account of restructuring of the Tariff from 6 digit to 8 digit, we find that the position of sub-heading 2204.20 nil rate of duty is corresponding to Notification No. 3/2005. We have also noticed that the appellants discharged the obligation under Rule 6 of the CENVAT Credit Rules by paying 6% of the invoice value on the clearance of the Rectified spirit. Thus, the appellants are eligible to avail the benefit of Notification No. 67/95-CE dated 16.3.1995 in respect of molasses used in the manufacture of Rectified spirit and ENA.

14. The above decision of the Tribunal has been affirmed and upheld by the Hon'ble Apex Court as reported in Commissioner of CE & ST versus Dharani Sugars & Chemicals Ltd., 2022 (379) ELT 556 (S.C.)

15. The Tribunal in the case of EID Parry India Limited (supra) by Final Order No.40464/2024 dated 25.04.2024 has applied the very same decision and held that the demand cannot sustain.

16. After appreciating the facts and following the above decisions, we are of the considered opinion that the demand, interest and penalties cannot sustain. The impugned order is set aside. The appeal is allowed with consequential relief if any.

(Order pronounced in the open court)

(VASA SESHAGIRI RAO)
Member (Technical)

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