CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No. 394 of 2007

(Arising out of Order-in-Appeal No.183/2006-CE (SLM) dated 11.12.2006 passed by Commissioner of Central Excise (Appeals), No.1, Foulks Compound, Anai Medu, Salem 636 001)

M/s.Salem Cooperative Sugar Mills Ltd. .... Appellant
Mohanur 637 015,
Namakkal District.

VERSUS

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

APPEARANCE :

Shri Hari Radhakrishnan, Advocate for the Appellant
Ms. O.M. Reena, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40074/2025

DATE OF HEARING : 23.10.2024
DATE OF DECISION : 09.01.2025

Per: Shri P. Dinesha

1. The Appellant cleared 'Undenatured Ethyl Alchohol' from its factory in the period between 01.03.2005 and 31.12.2005. In the manufacture of these goods, the Appellant used molasses. Until 28.02.2005, the 'Undenatured Ethyl Alcohol' was classifiable under the heading 2204 titled "Ethyl Alcohol of any strength whether denatured or not, but not including alcoholic liquor for human consumption." There were two sub-headings under this heading: 2204.10 is "Denatured Ethyl Alcohol of any strength" while 2204.90 is "other." Therefore, 'Undenatured Ethyl Alcohol' would fall under 2204.90 and the rate of duty was Nil. This view is affirmed by this Tribunal in the Appellant's own case vide **2018 (364) ELT 691** (**Tri.-Chennai)** [at para 10].

2. On and after 01.03.2005 consequent to the change in the tariff system, "Ethyl Alcohol and other spirits, denatured, of any strength" was tariff item 2207 20 00 and a rate of 16% was applicable. Undenatured Ethyl Alcohol was thus not covered by this tariff item. It is undisputed that there was no other tariff item in which it fell and that Undenatured Ethyl Alcohol was, on and after 01.03.2005, not 'excisable goods' at all. This view too is affirmed by this Tribunal in the aforesaid order in the Appellant's own case.

3. Until 28.02.2005, the Appellant treated the goods as exempt. Rule 6 of the CENVAT Credit Rules, 2004 contemplates two different methods for the payment of the

CENVAT credit claimed in respect of the manufacture of exempted goods. Sub-rule (2) contemplates a situation where, for the receipt, consumption and inventory of inputs and input services meant for use in the manufacture of dutiable and exempted goods, separate accounts are maintained. Sub-rule (3) contemplates a situation where no such separate accounts are maintained. Before us, there is no dispute that the Appellant has resorted to sub-rule (3).

4. We have heard Shri Hari Radhakrishnan, Ld. Advocate for the Appellant and Ms. O.M. Reena, Ld. Additional Commissioner for the Respondent.

5. The only issue that arises for consideration is, whether the Authorities below were justified in rejecting the refund claim of the appellant?

6. The relevant portions of sub-rule (3) of CCR 2004 read as follows:

> **"RULE 6. Obligation of a manufacturer or producer of final products and a provider of taxable and exempted services.**
>
> **....**
>
> (3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer or the provider of output service, opting not to maintain separate accounts, shall follow either of the following conditions, as applicable to him, namely :-
>
> (a) if the exempted goods are –
>
> i) goods falling within heading No.22.04 of the Frist Schedule to the Excise Tariff Act, (hereinafter in this rule referred to as the said First Schedule);
> ....."

7. From Rule 6(3)(a) it will be seen that if the exempted goods fall within the heading 22.04 (as the undenatured ethyl alcohol manufactured by the Appellant does), the manufacturer is required to pay an amount equivalent to the CENVAT credit attributable to the inputs and input services used in or in relation to the manufacture of such goods at the time of their clearance. Until 28.02.2005, the Appellant did so. To this extent therefore, we do not find any dispute.

8. Even after 28.02.2005 (i.e., from 01.03.2005 until 31.12.2005), the Appellant claims that it proceeded on the misconception that the same position would continue to apply and continued to pay amounts equivalent to the aforesaid CENVAT credit. It is the Appellant's contention that subsequently, the Appellant discovered that since Undenatured Ethyl Alcohol found no mention in the tariff on and after 01.03.2005 it was no longer an item of 'exempted goods' but were not 'excisable goods' at all, and accordingly, filed a claim for the refund of the CENVAT credit paid by it on the basis of this 'mistake', for the period from 01.03.2005 to 31.12.2005.

9. This claim came to be rejected by the Adjudicating Authority vide the Order-in-Original No. 84/2006-RF(C.Ex.) dated 28.07.2006 from which these proceedings originate. The Adjudicating Authority holds that the credit taken by the Appellant in relation to the manufacture of the Undenatured Ethyl Alcohol (described by the Adjudicating Authority as being non-excisable) was without the authority of law. He

holds that Rule 6(3)(a) would be inapplicable both in the availment and expunging of credit. The said Authority reasons that the credit was wrongly availed and was not within the purview of Rule 6(3)(a). He reasons that the debit made in the CENVAT credit and the expunging of the CENVAT credit cannot be said to have been done erroneously. He finally rejects the claim, observing that what was wrongly availed had been reversed and that there was thus no question of a claim for refund.

10. In first appeal, the Commissioner (Appeals) vide OIA No. 183/2006 dated 11.12.2006 has upheld the findings of the Adjudicating Authority. The Commissioner (Appeals) reasoned that non-excisable goods could not be treated at par with exempted goods. Reliance was placed on the decision of this Tribunal in **CCE Vs Kesar Enterprises Ltd. –** 2001 (130) ELT 93 (Tri.-Del.) and **CCE Raipur Vs Orissa Concrete & Allied Indus –** 2001 (127) ELT 178 (Tri.-Del.). The Commissioner (Appeals) then holds that the Appellant had thus wrongly availed CENVAT credit in respect of the non-excisable goods, and, like the Adjudicating Authority, has held that the wrongly availed CENVAT credit had been reversed by the payment of the like sum, and that that sum could therefore not be refunded.

11. Before us, learned counsel for the Appellant places reliance on the decision in the Appellant's own case (*supra*). That was a case for the tax period from 01.01.2006 to 31.12.2006. There, the Appellant reversed credit in terms of rule 6(3)(b) at 10% of the price of the non-dutiable

Undenatured Ethyl Alcohol. However, the Department contended that the Appellant ought to have reversed the whole of the credit attributable to the Molasses that were used as inputs in the production of the Undenatured Ethyl Alcohol. In this context, this Tribunal has given an unequivocal finding, at paragraph 11, that Undenatured Ethyl Alchohol are not goods specified in the tariff and are thus not goods specified in Rule 6(3). Effectively, therefore, the finding of this Tribunal is that Undenatured Ethyl Alchohol is not excisable goods.

12. Ld. Counsel for the appellant also places reliance on a decision of a coordinate bench in **Karmveer Kakasaheb Vagh SSK Ltd. Vs CCE Nashik** [Final Order No.85570-85571/2023 dated 11.06.2024 – 2024 (6) TMI 577 CESTAT MUMBAI] in support of the proposition that the Undenatured Ethyl Alcohol is excisable. However, while there is some discussion on this question in that order, there is no finding or reasoning on this question at all. The question in that case was whether the Molasses used in the production of Denatured Ethyl Alcohol. That case is thus distinguishable on two points: First, it dealt with Denatured Alchohol and not Undenatured Alchohol; and second, the question answered there concerned the dutiability of the Molasses used as 'inputs'.

13. In support of the same proposition, learned counsel places reliance also on **Rajshree Sugars & Chemicals Ltd. Vs CCE Puducherry –** 2016 (343) ELT 462 (Tri.-Chennai) This case too was a case where the question related only to

Denatured Alcohol and not to Undenatured Alcohol as in the present case.

14. Therefore, the case laws of **Karmveer** and **Rajshree Sugars** *Supra* do not support the case of the Appellant.

15. On the other hand, the decision of this Tribunal in the Appellant's own case is that Undenatured Ethyl Alchohol is not excisable. The lower authorities were, further, right in concluding that there is a distinction between non-excisable goods and exempt goods. The Appellant, in the statement of facts in this appeal, refers to the decision of this Tribunal in **Titawai Sugar Complex Vs CCE Meerut –** 2002 (147) ELT 1069 (Tribunal), which holds that there is no question of exempting duty in respect of goods which are not excisable. This Tribunal has, in the Appellant's own case, held that the Undenatured Ethyl Alcohol (the goods presently under consideration) are not excisable. Once goods are not excisable, they cannot be exempt.

16. We are therefore of the view, respectfully following the decision of co-ordinate Bench in the Appellant's own case, that the Undenatured Ethyl Alcohol is not excisable. Once the goods are not excisable, they cannot be considered exempt to fall within the scope of Rule 6(3). The Commissioner (Appeals) in the impugned order was thus right in holding that the Appellant could not have claimed credit in the first place so as to reverse the same by payment, and that the reversal of such credit by payment p ut the Appellant in a position in which it was compliant with

the law. Hence, the Commissioner (Appeals) was also right in holding that there was no question of granting refund as claimed.

17. We, therefore, do not find any merit in this Appeal filed by the assessee and accordingly, the same is dismissed.

(Order pronounced in the open court on 09.01.2025)

sd/- sd/-

(VASA SESHAGIRI RAO) **(P. DINESHA)**
Member (Technical) Member (Judicial)

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