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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. E/23 /2008 – SM[BR] Date 08/04/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH.

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH) Appellant

Vs

M/S PIONEER AGRO INDUSTRIES LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 402 / 2010-SM[BR] dated 31.3.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S PIONEER AGRO INDUSTRIES LTD
   DEFENCE ROAD, PATHANKOT.
2. Adv. / Consult SHRI K.K. ANAND ADV.
   A-5,BASMENT LAJPAT NAGAR –III
   NEW DELHI
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Harvana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No. 2, R.K. Puram, NEW DELHI

COURT NO. III

CENTRAL EXCISE APPEAL NO. 23 OF 2008-SM

[Arising out of Order-in-Appeal No. 315/CE/APPL/JAL/2007 dated 4.10.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jalandhar]

Dated of hearing/decision; 18th March, 2010

For approval and signature:

Hon'ble Mr. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

CCE, Jallandhar — Appellant

Vs.

M/s. Pioneer Agro Industries Ltd., — Respondents

Appearance:

Shri S.K. Bhaskar, Authorised Representative (SDR) for the Revenue;
Miss Asmita Nayak, Advocate for the respondents

Coram:

Hon'ble Mr. Rakesh Kumar, Member (Technical)

ORAL ORDER NO. 402/2010 SM(BR) **dated**

Per RAKESH KUMAR:

Facts giving rise to this appeal by the Revenue are, in brief, as under:-

1.1 One of the products being manufactured by the Respondents is Liquid Glucose which is manufactured from wheat and rice and common input used are Hydro Choloric Acid, Enzyme and Activated carbon in respect of which input duty credit has been taken. In the course of manufacture of Liquid Glucose, Gluten, and Spent Carbon emerge as unavoidable by-products both of which are fully exempted from duty. The point of dispute is as to whether in respect of clearances of Gluten and Spent Carbon an amount equal to their sale value was payable by the Respondents in terms of Rule 6(3)(b) of the Cenvat Credit Rules, 2002, as the Respondent have not maintained separate account and separate inventory of the inputs meant for use in the manufacture of dutiable finished products and the inputs meant for use in manufacture of exempted finished products. It is on this basis that a show cause notice dated 4.8.2005 was issued to the Respondent for demand of Rs. 4,19,791/- along with interest from the Respondent in respect of clearances of Gluten and Spent Carbon and imposition of penalty under Rule 13 of Cenvat Credit Rules. The show cause notice was adjudicated by the Asst. Commissioner vide Order-in-Original dated 18.4.2006 by which proceedings initiated against the Respondent were dropped. The Asst. Commissioner dropped the proceedings mainly on the basis that Gluten and Spent Carbon have emerged as unavoidable By-products and the Cenvated input Hydro Choloric Acid has not been used in the manufacture of Gluten but has been used in the manufacture of Liquid Glucose. The Department filed a review appeal before the Commissioner (Appeals) against the Asst. Commissioner's order and the Commissioner (Appeals) vide Order-in-Appeal dated 4.10.2007 dismissed the department's appeal. It is against this order that the department has filed appeal before the Tribunal.

2. Heard both sides.

2.1 Shri S.K. Bhaskar, learned D.R., assailed the impugned order reiterating the grounds of appeal and pleaded that the Commissioner (Appeals)'s order is not correct in view of the recent judgement of the Bombay High Court in the case of CCE, Thane vs. Nicholas Piramal (India) Ltd., reported in 2009 (244) ELT 321 (Bom.) wherein the Hon'ble High Court has held that when common Cenvated inputs are used in the manufacture of dutiable as well as exempted finished products and as per condition of Rule 6(2) of Cenvat Credit Rules separate account and inventories of the Cenvated inputs used in the manufacture of dutiable finished products and exempted finished products are not maintained, the provision of Sub-rule (3) of Rule 6 would become applicable irrespective of hardship in maintaining of account and following the requirement of Rule 6(2).

2.2. Miss Asmita Nayak, Advocate, the learned Counsel for the Respondent pleaded that in this case product to be manufactured by the Respondent is Liquid Glucose, not Gluten or Spent Carbon, that Gluten and Spent Carbon emerge as unavoidable By-product; that cenvated inputs have been used in the manufacture of liquid glucose, not in the manufacture of unavoidable by-products – spent carbon and gluten, that it is the judgement of the Tribunal in the case of Narmada Gelatines Ltd. vs. CCE, Bhopal, reported in 2009 (233) ELT 332 (Tri. – Del.) and Rallis India Ltd. vs. UOI, reported in 2009 (233) ELT 301 (Bom.) which are applicable to the facts of this case, as when the exempted finished products emerge as unavoidable By-product, maintaining separate account and inventories of the inputs used in the manufacture of dutiable finished product and exempted By-product is impossible. In view of this, she pleaded that the impugned order is correct and does not merit any interference.

3. I have carefully considered the submissions from both sides and perused the record. The undisputed fact in this case are that finished product manufactured by the Respondents is Liquid Glucose for which starting material is wheat and rice, and enzyme, Hydro-choloric Acid and Activated carbon are used in processing the material. In the course of processing of wheat and rice to obtain liquid glucose, Gluten and spent carbon emerge as unavoidable byproducts and even if the respondent want they cannot maintain separate account and inventories of inputs used for the manufacture of liquid glucose and inputs meant for

manufacture of Gluten and spent carbon as gluten and spent carbon are unavoidable by-products, not the products which the Respondent wanted to manufacture. In my view in this case, it is the judgment of Rallis India Ltd. (supra) and the Tribunal's decision in the case of Narmada Gelatines Ltd. (supra) which are applicable to the facts of this case. In the case of Nicholas Piramal (India) Ltd. the respondents were manufacturing two finished products and Vitamin 'A' falling under Chapter heading 29.36 and Animal Feed supplement falling under Chapter heading 23.02 of the Schedule to the Central Excise Tariff Act, 1985 and while Vitamin 'A' is liable to central excise duty, animal feed supplement was not liable to central excise duty, but since common inputs in respect of which cenvat credit had been taken had been used in the manufacture Vitamin 'A' falling under Chapter heading 29.36 and Animal feed supplement and separate account and inventories of the inputs used in the manufacture of dutiable and fully exempt product had not been maintained, the department invoked Rule 6(3)(b) and had demanded an amount equal to 8%/10% of the value of the exempted finished product. It is this background that the Hon'ble High Court held that irrespective of hardship involved in maintaining separate account and inventories and irrespective of huge difference between actual quantum of credit on the inputs used in the manufacture of exempted finished product and the amount payable in terms of Rule 6(3)(b), in view of the clear provision of sub-rule (2) & (3) of Rule 6, the amount equal to 8%/10% of the value of exempted product would be payable by the respondents in terms of Rule 6(3)(b). In this case as discussed above, intended finished product is only liquid glucose and Gluten and Spent carbon emerge only as unavoidable by-products and, therefore, Hon'ble Bombay High Court's judgment in the case of CCE, Thane vs. Nicolus Piramal (India) Ltd. (supra) is not applicable to this case. In view of this, I do not find any infirmity in the impugned order. The appeal is dismissed.

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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