

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/3584/2010 - EX[DB]

Date 02/04/2012

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

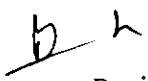
To :
M/S RANA SUGAR LTD.
DISTILLERY DIVISION, LAUHKA PATTI,
DISTT. TARN TARAN (PUNJAB)
M/S RANA SUGAR LTD.

Appellant
Vs
Respondent

C.C.E. LUDHIANA

2012 EX[DB] dated 30-3-12

I am directed to transmit herewith a certified copy of Final order No.A/382/
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

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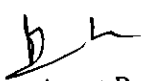
1. Respondent

C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult *SH. V. KACKARIA, C/D*
MR.G.S.BHANGOO

H.NO. 5, SECTOR-10A, CHANDIGARH.

3. C.D.R
4. Bar association. CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd., No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
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Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III**

Excise Appeal No. 3584 of 2010

Date of Hearing/decision : 12.01.2012

Date of Pronouncement : 30.3.2012

[Arising out of Order-in- Original No. 27/ Ldh/ 2010 dated 12.8.2010
passed by the Commissioner of Customs & Central Excise, Ludhiana]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Mathew John, 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? | No |
| 2. Whether it should be released under Rule 27 :
of the CESTAT (Procedure) Rules, 1982 for
publication in any authoritative report or not? | Yes |
| 3. Whether Their Lordships wish to see the fair :
copy of the Order? | Seen |
| 4. Whether Order is to be circulated to the :
Departmental authorities? | Yes. |

M/s. Rana Sugar Ltd.

Appellants

Vs.

Commissioner of Central Excise
Ludhiana

Respondent

Appearance:

Shri V. Kackaria, Advocate for the Appellants

Shri N. Pathak, DR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
 Hon'ble Mr. Mathew John, Member (Technical)

FINAL **ORAL ORDER NO. A/382/2012-EX(BR)**

Per Archana Wadhwa (for the Bench):

The present appeal stands filed against the order of the Commissioner (Appeals) Ludhiana vide which he has disallowed the Cenvat credit of Rs.1,77,10,796/- along with confirmation of interest and imposition of penalty of identical amount on the ground that capital goods, on which appellant availed modvat credit, were exclusively used for manufacture of non dutiable intermediate product.

2. After hearing both sides, we find that the appellants are engaged in the manufacture of Ethyl alcohol and other spirits, along with denatured spirit falling under Chapter 22 of the first scheduled to the Central Excise Tariff Act, 1985. They were holding valid Central Excise registration for the purpose of manufacture of such spirit as also denatured spirit. The appellants availed the benefit of Cenvat credit of duty paid on the inputs as well as on the capital goods in terms of the Cenvat Credit Rules, 2004.

3. As an audit objection, the Revenue entertained a view that inasmuch as the appellants are primarily and mainly engaged in manufacture of spirit, which is a non-excisable item and on which no excise duty is being paid by them, the Cenvat credit availed in respect of

capital goods so utilised was not available. The appellants manufacture spirit in their factory and 98% of the same is sold in the open market. Balance of 2% of the spirit is converted into denatured spirit. Denatured spirit is an excisable product and the appellants are clearing the same on payment of Central Excise duty. Inasmuch as the process of manufacture of denatured spirit from spirit is a simple process of mixing of denaturant like acetone and benzene to the spirit in the loaded tank, revenue entertained a view that plant and machinery used for the manufacture of spirit that is non-excisable item has no role to play in the manufacture of their final excisable product.

4. Revenue also procured an expert opinion of Shri Harkamaljit Singh, Reader, Department of Applied Chemical Sciences and Technology, Guru Nanak Dev University, Amritsar wherein it was stated that no plant and machinery is required for the manufacture of denatured spirit from the rectified spirit.

5. Based upon the above, proceedings were initiated against the appellants by way of issuance of show cause notice dated 16.2.09 proposing to confirm the demand by disallowing the Cenvat credit availed on the capital goods during the period June, 2005 to October, 2008. The said show cause notice culminated into an order passed by Commissioner, which is impugned before us.

6. Learned Advocate appearing for the appellants has assailed the impugned order on merits as also on limitation. Learned DR appearing

for the Revenue supports the Commissioner's view and prays for rejection of the appeal.

7. The facts are not much in dispute. Admittedly, the appellants are manufacturing spirit as also rectified spirit. Though major part of the spirit is being cleared by the appellant as such without payment of duty, a small part of the same is being converted into denatured spirit. It is also not in dispute that the process involved for manufacture of the final excisable product i.e. denatured spirit is a simple mixing of denaturants to the spirit already manufactured by the appellants. The issue required to be decided is as to whether the capital goods used in the manufacture of spirit on which no duty is being paid by the appellants are hit by Cenvat Credit Rules so as to debar the availment of credit on the same.

8. The adjudicating authority has relied upon the expert opinion of one Shri Harkamaljit Singh, who is a reader in Department of Applied Chemical Sciences and Technology, Guru Nanak Dev University, Amritsar. For better appreciation of the opinion, the same is reproduced below:

" (i) The Denature Spirit can be manufactured with the simple process of taking the Rectified Spirit / Impure Spirit into the drums and then by adding denaturants in the Rectified Spirit / Impure spirit. Thus become unsuitable for human consumption and denaturants can not be dissolved to retain the original form of Rectified Spirit / Impure Spirit. No Plant and Machinery is required for the manufacture of Denature Spirit from the Rectified Spirit / Impure Spirit.

(ii) Mainly, in the Distillery Units, Spirit is manufactured from the Molasses and Food Grains. During the course of manufacturing Spirit, Impure spirit also arises which is further used in the manufacture of Denatured Spirit as explained above. Further as explained in (i) above, the denaturants are added into the Rectified Spirit / Impure Spirit for the manufacture of Denatured Spirit. Though the Plant and Machinery is required for the manufacture of Rectified Spirit / Impure Spirit but for the manufacture of Denatured Spirit beyond the process of Rectified Spirit / Impure Spirit, no plant and machinery is required. It can be manufactured by the same simple process as explained above."

9. From the above, the Revenue entertained a view that inasmuch as the process of conversion of ~~spirit~~^{spirit} into denatured spirit is a simple process of mixing, The plant and machinery cannot be held to have been used in the manufacture of final excisable product.

10. The appellants had contested the above finding by submitting that spirit comes into existence at an intermediate stage and unless the ~~spirit~~^{spirit} is manufactured, denatured spirit cannot be manufactured. It stands submitted before us that the process of manufacturing of denatured spirit starts from the stage of fermentation of molasses and food grain and with the production of Ethyl Alcohol, denatured spirit is manufactured subsequently, as and when required. As such, the spirit or impure spirit arises at an intermediate stage and the use of capital goods for converting molasses and food grain into spirit which thereafter are

converted into denatured spirit is very much used in relation to the manufacture of denatured spirit, which is admittedly an excisable product. Learned advocate has strongly contested that it is not possible to manufacture denatured spirit unless spirit comes into existence. They also relied upon the Board's circular No. 665/56/2002-CX dated 25.9.2002 wherein it was clarified that the Cenvat credit would be admissible in a situation where exempted goods comes into existence at an intermediate stage and are further used in the manufacture of dutiable final product. They also drew our attention to various decisions of the Tribunal holding that emergence of an exempted product at an intermediate stage would not result in a denial of modvat credit in respect of capital goods. They also contested the demand on the issue of limitation by submitting that entire process was in the knowledge of the Revenue and they have been filing due returns and there is no evidence of any mis-statement or suppression on their part.

11. As against the above submissions, the Revenue's contention is that during the course of manufacture of ethyl alcohol i.e. spirit, some waste arises which is as impure spirit and is not fit for human consumption. The appellants are clearing 98% of ethyl alcohol as such and only 2% of impure spirit is converted into denatured spirit by manually mixing some denaturant like acetone and benzene without any use of machinery. Inasmuch as the main product of the appellant is ethyl alcohol which is non-excisable, the manufacture of only 2% of

the excisable product would not entitle them to avail the Cenvat credit on the plant and machinery. It is the contention of the learned DR that a manufacturer who is engaged in the manufacture of excisable goods can only avail the credit in respect of capital goods and no credit is available when the capital goods are exclusively used in relation to manufacture of ^{exempted} final product. He also supports the reasoning of the adjudicating authority as regards the demand being barred by limitation.

12. For better appreciation of the reasoning adopted by the Commissioner on the main issue, we reproduce para 4.9 and 4.10 of Commissioner's order as under:

"4.9 In this regard it is observed that denatured spirit is manufactured from impure spirit by adding some denaturant to the same. However, the fact that the actual product manufactured by them is ethyl alcohol, a non excisable item, which is not in dispute. There is also no dispute about the fact that production of impure spirit is only about 2% of the total production. This impure spirit is nothing but a kind of waste as the same cannot be used for the manufacture of alcoholic liquor meant for human consumption, which is the main product of the Noticee. I am not inclined to accept the contention of the noticee that the same machinery is used for the manufacture of denatured spirit inasmuch as no person of prudence will install machinery just for producing waste. The machinery has been installed by them for the manufacture of ethyl alcohol. So the Noticee cannot claim that they have installed machinery for the manufacture of denatured spirit. They installed the machinery for the manufacture of ethyl alcohol i.e. alcoholic liquors meant

for human consumption. Name of the unit i.e. 'Rana Sugar Mills, Distillery unit' also indicates the same. So, they are not eligible to avail Cenvat credit on the capital goods used for the manufacture of ethyl alcohol, a non excisable product.

4.10 I am also disinclined to accept that the impure spirit is an intermediate product, as claimed by the Noticee because it does not emerge at intermediate stage. Rather it emerges out as waste during the course of manufacture of ethyl alcohol and it has its independent existence. This impure spirit is further converted into denatured spirit by manually mixing in it denaturant and no machinery is used for such mixing. This basically is done to render impure spirit unfit for human consumption. As such, it is a waste and by no stretch of imagination it can be said that this item is an intermediate product."

13. As is seen from the above, the prime and basic reason for denial of credit is that the machinery is used in the manufacture of ethyl alcohol, 98% of which is being cleared without payment of duty. However, we find that admittedly 2% of such ethyl alcohol is being converted into an excisable product and which is being cleared on payment of duty. The question^{is} as to whether capital goods have to be held as having been exclusively used in the manufacture of ethyl alcohol or the same can be held to be have used in the manufacture of denatured spirit. Admittedly denatured spirit cannot come into existence unless the spirit is manufactured. The Revenue's contention that only 2% of denatured spirit is being cleared on payment of excise

duty cannot advance their case inasmuch as there is no percentage restrictions in the Cenvat Credit Rules to disallow the credit availed on the capital goods. In any case, we find that ⁱⁿ the absence of manufacture of spirit, the final product i.e. denatured spirit can **NEVER** come into existence. In these circumstances, can it be held that plant and capital goods were used **ONLY** and **EXCLUSIVELY** for manufacture of spirit. The answer, in our views, would be a emphatic **NO**.

14. Taking an example of every day life, for preparation of a dosa, rice and lentils are required, which have to be soaked in water overnight, have to be grinded in mixer-grinder and again have to be kept for sometime. The batter which emerges is to be used for preparation of dosa. Admittedly, the process of manufacture of batter require mixer grinder and then emerges the batter, and the process of preparation of dosa does not require the use of mixer-grinder as it is a simple process of spreading the batter on the iron plate and roast the same. Can it be said that mixer-grinder was not used in the manufacture of dosa but the same was used in the manufacture of batter. The process cannot be artificially split so as to hold that the batter was non-excisable final product and inasmuch the subsequent process of making dosa was a simplicitor process of spreading the batter on the iron ^{plate} and roasting the same. It may be mentioned here that in a given case, 98% of the batter may be sold or disposed without payment of duty and only 2% of the

same may be converted into dosas. Even then it is to be held that grinder has been used for the manufacture / preparation of dosa.

15. Inasmuch as without first producing the spirit, denatured spirit cannot come into existence, ^{it} has to be held that the capital goods are used in the manufacture of denatured spirit. Denatured spirit may have been produced out of waste spirit or out of by-product, which emerges during the manufacture of spirit. This fact will not make difference in the law. As such, we are of the view that the capital goods on which the credit stand availed were utilised for the manufacture of final product i.e. denatured spirit, which was cleared on payment of duty, the credit on the same cannot be denied.

16. At this stage, we may refer to various decisions ~~for~~ which our attention stands drawn. Board's Circular No. 665/56/02-CX dated 25.9.02 ^{clarifies} ~~makes out~~ that even in the absence of erstwhile Rule 57R(2), the credit on the capital goods used in the manufacture of intermediate goods which are exempted from payment but used captively in the manufacture of finished goods chargeable to duty cannot be denied.

Reference to various decisions is made which are as follows:

1. CCE, Tiruchirapalli vs. Sudarshanam Spinning Mills Ltd.
[2004 (167) ELT 210 (Tri- Chennai)];
2. Godavari Sugar Mills Ltd. vs. CCE, Belgaum
[2007 (212) ELT 234 (Tri-Bang.)];

3. Excel Industries Ltd vs. CCE, Mumbai V
[2005 (187) ELT 216 (Tri-Mum)];
 4. CCE, Coimbatore vs. S.S.P.E. Cotton Mills P. Ltd.
[2004 (175) ELT 796 (Tri-Chennai)];
 5. Surya Prabha Mills Ltd. vs. CCE, Coimbatore
[2005 (179) ELT 219 (Tri-Chennai)];
 6. Lakshmi Spinners (P) Ltd. vs. CCE Madurai
[2005 (191) ELT 700 (Tri-Chennai)];
 7. Godavari Sugar Mills Ltd. vs. CCE, Belgaum
[2007 (212) ELT 234 (Tri-Bang)];
 8. CCE, Chhattisgarh vs. HEG Ltd.
[2010 (260) ELT 386 (Chhattisgarh)];
 9. Sterlite Industries (I) Ltd. vs. CCE, Pune
[2005 (183) ELT 353 (Tri-LB)]; and
 10. Escorts Ltd. vs. CCE, Delhi
[2004 (171) ELT 145 (SC)]
17. Ratio of the above decisions is that credit, in case where capital goods/ inputs were used in the process of manufacture of intermediate exempted products, which is further used in the manufacture of dutiable final products cannot be denied. We find no reason to take a different

view in the present case. Inasmuch as the appeal has been allowed on the merits, grievances in respect of demand being barred by limitation are not ^{being} addressed to.

18. In view of the foregoing discussion, we set aside the impugned order and allow the appeal.

(Pronounced in the open Court on 30/3/12)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

SS