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

Appeal No. E/3040/2011 &1293/2012- EX[DB] Date **19/06/2012**

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

To :
M/S MANKAPUR CHINI MILLS
(A UNIT OF BALRAMPUR CHINI MILLS LTD)VILL&
PO- DATAULI, TEH- MANKAPUR, DISTT- GONDA(UP)
M/S MANKAPUR CHINI MILLS Appellant

Vs

Respondent
C.C.E ALLAHABAD

I am directed to transmit herewith a certified copy of **Final order No. A/688-689 2012 EX|DB|** dated 07-6-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions 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
13. Guard file

Assistant Registrar
(Excise Appeal Branch

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

COURT-I

Date of hearing/decision: 7.6.2012

Central Excise Appeal No.3040 of 2011 and 1293 of 2012

Arising out of the order in appeal No.198/CE/APPL/ALLD/2011 dated 27.9.2011 and No.34/CE/APPL/ALLD/2012 dated 16.3.2012 passed by Commissioner (Appeals), Central Excise , Allahabad.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

Manakpur Chini Mills ... Appellant
(A Unit of Balrampur Chini Mills Ltd.)

Vs.

C.C.E., Allahabad .. Respondent

Present for the appellant : Shri Mayank Garg,Advocate
Present for the respondent : Shri S.K.Panda, A.R.

FINAL Order No. A/688-689/2012-EX(BR)

Per Mr. Rakesh Kumar:

The appellant are manufacturers of sugar and molasses. In course of manufacture of sugar two waste products are generated – pressmud and waste water, which for complying with the environmental regulations, are mixed together and converted into bio-compost which is sold by them. The department was of the view that since bio-compost is an excisable product under Chapter 31 of the Central Excise Tariff with nil rate of duty, same would be an "exempted goods", as defined in Cenvat Credit Rules, 2004 and since common Cenvat credit availed inputs have been used for manufacture of dutiable final products – (sugar and molasses) and exempted final- product (bio-compost) and since no separate account and inventory have been maintained in terms of the provisions of Rule 6 (2) of Cenvat Credit Rules, 2004, the appellant in accordance with the provisions of Rule 6(3), would be required to pay an amount equal to 5% of the sale value of bio-compost. It is on this basis that demand of Rs. 9,30,192/- & Rs.1,30,275/- for the period from Sept. 2007 to August 2009 and Sept. 2009 to March 2010 respectively was confirmed against the appellant alongwith interest and penalty of equal amount was imposed by the Joint Commissioner vide orders-in-original dated 15/2/2011 & 27/10/2011. On appeals to Commissioner (Appeals), the orders passed by the original Adjudicating Authority were upheld vide orders-in-appeal dated 16/3/2012 & 27/9/2011 against which the present appeals alongwith stay applications have been filed.

2. Heard both sides. Though these matters were lists for hearing of stay applications only, after hearing the same for some time we were of the view that the appeals themselves can be decided orly —— as a short issue is involved. Accordingly, the requirement of pre-deposit is waived and with the consent of both the sides, the matters ~~was~~ were heard for final disposal.

3. Shri Mayank Garg, Advocate, the learned Counsel for the appellant pleaded that press-mud is unavoidable and inevitable waste which arises when the cane juice obtained after crushing the sugarcane is further processed for manufacture of sugar; that press-mud is nothing but impurities present in the cane juice; that press-mud is converted into bio-compost and is cleared by the appellant ; that none of the show cause notices mention as to which common input or input services have been used in or in relation to the manufacture of Bio-compost and other dutiable final products, therefore, the provisions of Rule 6(2) & Rule 6 (3) would not be applicable ; that in this regard, he relies upon the judgment of the Tribunal in the case of **E.I.D. Parry (India) Ltd. vs. C.C.E., Trichy reported in 2004 (61) RLT 673** and of Hon'ble Bombay High Court in the case of **Rallis India Ltd. vs. Union of India reported in 2009 (233) ELT 301 (Bom.);** and that in view of this, the impugned orders are not correct.

4. Shri Nagesh Pathak, learned Senior Departmental Representative reiterating the finding of the Commissioner (Appeals) emphasised that bio-compost is excisable item chargeable to nil rate of duty and hence it has to be treated as exempted final product under Rule 2(d) of Cenvat Credit Rules, 2004; that since the appellant have not maintained separate inventory for the common inputs or input service, used in the manufacture of exempted final product and dutiable final products; the provision of Rule 6(3) of Cenvat Credit Rules would become applicable and in respect of clearances of bio-compost, an amount @ 5% of the sale value would be recoverable and that the demands under Rule 6(3) have, therefore been correctly upheld. He therefore pleaded that there is no infirmity in the impugned orders.

5. We have carefully considered the submissions from both sides and perused the record.

6. The issue involved in these appeals is no more res -integra for the reason that this issue has been settled by the Hon'ble Bombay High Court in the matter of **Rallis India Ltd. vs. UOI (supra)** wherein the Hon'ble Bombay High Court held thus:

> **26.** In the present case, the mother liquor arising in the manufacture of gelatin is admittedly a waste on which no excise duty is payable. In spite of the fact that no excise duty is payable on the clearance of waste mother liquor, in view of Rule 57D, the petitioner is entitled to avail entire credit of duty paid on HCL which is used as input in the manufacture of gelatin. In other words, in the present case, the petitioner is not required to reverse the credit of duty on HCL at the time of clearance of the waste mother liquor and consequently there would not be any obligation to pay presumptive amount under Rule 57CC for not maintaining separate account.
>
> **27.** The fact that the waste mother liquor arising in the manufacture of gelatin was further processed to manufacture exempted phosphoryl 'A' and 'B' would not attract Rule 57CC, because, if Rule 57CC was not applicable at the time of clearance of the waste mother liquor arising in the manufacture of dutiable gelatin, then the said rule cannot be applied merely because mother liquor was further processed to manufacture exempted final product, namely, phosphoryl 'A' and 'B'. In other words, liability to pay the presumptive amount under Rule 57CC would arise only if the waste mother liquor is held to be a final product. It is not even the case of the revenue that the waste mother liquor arising in the manufacture of gelatin is a final product. Therefore, in the facts of the present case, if Rule 57CC was not applicable at the time of clearance of waste mother liquor, then Rule 57CC would not apply at the time of clearance of the exempt phosphoryl 'A' and 'B' manufactured out of waste mother liquor.

7. Otherwise also, we find that show cause notices issued in these cases are defective inasmuch as neither of the show cause notices indicates as to which are

the input and input services used which have resulted in the generation of press-mud which was converted into bio-compost. Thus, going by the ratio of the judgment of Hon'ble Bombay High Court, we find merit in these appeals and we are of the view that impugned orders are not sustainable. The impugned orders are set aside and the appeals are allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/