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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/1826/2011-EX[DB]

Dated: **22/08/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
THE SEKSARIA BISWAN SUGAR
FACTORY LTD.
THE GENERAL MANAGER, BISWAN,
DISTT. SITAPUR.

THE SEKSARIA BISWAN SUGAR FACTORY LTD. (Appellant)

VS

C.C.E. LUCKNOW (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/960/2012-EX[DB]** dated **14/08/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

2. Advocate(s) / Consultant(s):
Kapil Vaish
B-51, Butler Plaza, 95, Civil Lines,
Bareilly.

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

13. Gaurd 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: 14.8.2012

Central Excise Appeal No.1826 of 2011

Arising out of the Order-in-Appeal No.136-CE/LKO/2011 dated 25.4.2011 passed by The Commissioner (Appeals), Customs & Central Excise, Lucknow.

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?	

Seksaria Biswan Sugar Factory Ltd. ... Appellant

Vs.

C.C.E., Lucknow .. Respondent

Present Shri Kapil Vaish, Consultant for the appellant
Present Shri M.S. Negi, A.R. for the respondent

CORAM : Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. A/960/2012-EX(BR) Dated : ___________

Per Justice Ajit Bharihoke (Oral) :-

The appellant manufacture sugar, molasses and denatured spirit chargeable to Central Excise Duty. They avail Cenvat credit of excise duty paid on inputs. In the process of extraction of cane sugar juice by crushing sugarcane a by-product/waste i.e. "Bagasse" emerges. The appellant sold part of Bagasse in market without payment of duty. The department was of the view that since the appellant have not maintained separate account and inventory of the inputs used in or in relation to manufacture of dutiable final products – sugar and molasses and exempted final product – "Bagasse", in terms of the provisions of Rule 6 (3) of Cenvat Credit Rules, 2004, appellant would be required to pay an amount equal to 10% of the sale value of "Bagasse" On this basis, the Jurisdictional Assistant Commissioner issued a show cause notice to the appellant raising demand of excise duty amounting to Rs.45,15,283/- and also proposed to impose penalty. Appellant contended the show cause notice by filing reply. However pending adjudication, the appellant reversed proportionate cenvat credit availed on common outputs under protest and informed the Department that he has reversed proportionate reversed the cenvat credit amounting to Rs.12,92,557/-.

2. Jurisdictional Additional Commissioner after hearing the parties and taking note of the reversal of cenvat credit on common input dropped the demand of Rs.45,15,283/-. He however confirmed the demand of interest of Rs.4,14,672/- under Rule 14 of Cenvat Credit Rules for late reversal of cenvat credit entry and imposed equal amount of penalty on the appellant.

3. Appellant preferred appeal against the order in original. Commissioner (Appeals) vide impugned order partly accepted the appeal and while confirming the demand for interest he set aside the order in original imposing equal amount of penalty.

4. Shri Kapil Vaish, ld. Authorised Representative for the appellant, pleaded that the issue involved in this case stands decided in their favour by the judgment of the Tribunal in the case of CCE, Meerut – I vs. Shakumbari Sugar & Allied Industries Ltd. reported in 2004 (176) E.L.T. 819 (Tri. – Del.), and that the Civil appeal filed by the Department against this judgment of the Tribunal has been dismissed by the Hon'ble Supreme Court in the case of Commissioner vs. Shakumbari Sugar & Allied Industries Ltd. – 2005 (189) E.L.T. A62 (S.C.) with following observations :-

"Delay condoned.

It is stated that the point in issue is concluded against the appellant by a judgment of this Court dated 20th February, 2004 in Civil Appeal No. D27628/2003 [*Commissioner of Central Excise, Meerut – II vs. M/s Kichha Sugar Co. Ltd.]* in this view of the matter, the appeal is dismissed."

He, therefore, pleaded that the impugned order is not correct.

5. Shri M.S. Negi, the ld. Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and also cited the Board Circular No. 904/24/2009-CX. dated 28/10/2009, wherein it has been clarified that in the Budget of 2008, the definition of excisable goods in Section 2(d) of the Central Excise Act has been amended as a result of which the bagasse emerging as a by-product in sugar mills would be treated as an exempted excisable goods and in respect of its clearances an amount equal to 5% of the sale value would be chargeable, if the Cenvat credit on the common inputs has been taken. He, therefore, pleaded that there is no infirmity in the impugned order.

6. We have carefully considered the submissions from both the sides and perused the records.

7. We have considered the rival submissions. We find that Bagasse emerges in course of crushing of the sugarcane. It may be noted that crushing of sugarcane is necessary to extract cane sugar juice which in turn is processed for production of sugar and molasses. Bagasse is the waste product left after the crushing of sugarcane. Therefore, by no stretch of imagination it can be said that the assessee possibly could have maintained separate accounts for the inputs for production of sugar and molasses (excisable items) and bagasse. Thus, in our considered view, the amendment in Finance Act,

cited by Shri M.S. Negi, AR and the Board's Circular would not make any difference in the facts and circumstances of the case. Moreover, the issue in this appeal is set at rest by Allahabad High Court vide order dated 18.5.2012 in a bunch of Writ Petitions including Civil Misc. Writ Petition No.11791 (M/B) of 2010 titled Balrampur Chinni Mills Ltd. vs. UOI and others wherein the Hon'ble High Court has held thus:

> " Thus, it is not in dispute that the bagasse is an agricultural waste of sugarcane, though marketable product, but the duty cannot be imposed as it does not involve any manufacturing activity simply by adding an explanation under section 2(d) of the Central Excise Act, 1944, whereby the definition of 'goods' has been defined will not make bagasse, which, as stated hereinabove, is an agricultural waste to be a dutiable item and the Chief Commissioner vide Circular dated 3.10.2009 nullified the judgement and order dated 217.2010 rendered in Civil Appeal No.2791 of 2005.
> Bagasse is classified under sub-heading 2303 20 00 of Central Excise Tariff Act. In view of the judgment of Apex Court in Civil Appeal No.2791 of 2005, Commissioner of Central Excise v. Balrampur Chinni Mills, Gonda, decided on 21.10.2010, the Circular of the Chief Commissioner, Central Excise, Lucknow as well as Circular of Central Board of Excise and Customs are liable to be quashed which is the basis for issuing the demand."

8. In view of the above, we are unable to sustain the impugned order confirming demand of interest on the appellant, in view of the fact that the appellant is not liable to pay duty on Bagasse cleared in the market. Impugned order is , therefore, set side and the appeal is allowed with consequential relief.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

scd/