

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT – IV

Service Tax Appeal No. E/53374/2018 [SM]

[Arising out of Order-in-Appeal No. 748-CRM-CE-JDR-2018 dated 10/07/2018 passed by the Commissioner, CGST & Central Excise, Udaipur]

**Laxmi Agro Industrial Consultants
And Exporters Limited**

...Appellant

Vs.

C.E. & S.T., Udaipur

...Respondent

Present for the Appellant : Mr. Lalitendra Gulani &
Mr. Sourabh, Advocates

Present for the Respondent: Mr. K. Poddar, AR

Coram: HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 27.12.2018

FINAL ORDER No. 53478 / 2018

PER: ARCHANA WADHWA

Appellants are engaged in the manufacture of linear alkyl benzene sulphonic acid. During the manufacture of the said final product, spent sulphuric acid emerges as a by-product. As the appellant are availing the benefit of cenvat credit paid on inputs, Revenue entertained the view that since the spent sulphuric acid emerges as a by-product and is being cleared by the appellant without payment of duty, they have to pay a part percentage of the value of the same in terms of the provisions of Rule 6(3) of the Cenvat Credit Rules. Though there was an earlier order of the Tribunal in the same assessee's case reported as **CCE VS. Laxmi Agro Industrial Consultants and Exporters Ltd 2011(274) ELT 176 (Allahabad)** laying down that there was no requirement to pay a part percentage on the value of the said goods but Revenue by entertaining the view that subsequent to amendment of the provision with Rule 6(1) vide which an explanation was inserted, the

spent sulphuric acid would attract the levy in terms of Rule 6(3). Accordingly, proceedings were initiated against them resulting in passing of the present impugned orders.

2. The explanation inserted in Rule 6(1) w.e.f. 01.03.15 is to the effect that - "for the purpose of this Rule, exempted goods or final products as defined in Clauses (d) and (h) of Rule 2 shall include non excisable goods cleared for construction from a factory." The said explanation came to be interpreted by the Tribunal in the case of **Kichha Sugar Company Ltd. Vs. CCE 2018 (10) TMI 1151 – CESTAT New Delhi** and it was held as under:

"Even after the amendment, Explanation-1 extends exemption in terms of Rule 2(d) and 2(h) as read below:

(d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon and includes goods which are chargeable to "Nil" rate of duty.....

(h) "final product" means excisable goods manufactured or produced from input,.....

8.2 Since the main condition for Rule 6 is still, "obligation of a manufacturer or producer of final products," it doesn't extend to by products released during the process of manufacture of main product that too without involvement of any such activity, which may be called as manufacture.

9. In view thereof, I am of the opinion that irrespective of the amendment, there arises no liability upon the appellant to pay the duty as demanded for the period w.e.f. September, 2014 to February, 2015 in Appeal No. 52211/2018 nor for the reversal of the credit as demanded for the period June, 2015 to March, 2016 in Appeal No. 52210/2018."

3. To the same effect are the other decisions in the case of **Shree Narmada Khand Udyog, Sahakari Mandali Limited Vs. CCE 2018 (8) TMI 1075 – CESTAT Ahmedabad** and

Pannageshwar Sugar Mills Ltd. Vs. CCE 2018 (10) TMI 966-CESTAT Mumbai. Inasmuch as the issue stands decided by the above decisions I set aside the impugned order and allow the Appeal with consequential relief.

[Dictated and pronounced in the open Court]

**(ARCHANA WADHWA)
MEMBER (JUDICIAL)**

D.J.