# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
# REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

| S.No. | Appeal No. | Appellant | Respondent | Impugned Order No. & Date |
|---|---|---|---|---|
| 1. | E/218/2011 | The Andhra Sugars Limited | CCE,C&ST, Guntur | O-I-O No. 22/2010-CEX. Commr. Dt. 22.10.2010 passed by CCCE&ST, Guntur |
| 2. | E/86/2012 | The Andhra Sugars Limited | .do. | O-I-O No. 10/2011-CEX. Commr. Dt. 12.10.2011 passed by CCCE&ST, Guntur |
| 3. | E/3178/2012 | The Andhra Sugars Limited | do. | O-I-O No. 76/2012-CEX. Commr. Dt. 30.08.2012 passed by CCCE&ST, Guntur |
| 4. | E/21647/2015 | The Andhra Sugars Limited | .do. | O-I-A No. GUN-EXCUS-000-APP-023-15-16, dated 30.04.2015 passed by CCCE&ST, Visakhapatnam. |
| 5. | E/21929/2015 | The Andhra Sugars Limited | .do. | O-I-A No. GUN-EXCUS-OOO-APP-092-15-16, dated 12.08.2015 passed by CCCE&ST, Guntur. |

**Appearance**
Shri K.S. Ravi Shankar & Sh. N. Anand, Advocates for the Appellant.

Shri Y.S. Murthy, Superintendent /AR for the Respondent.

**Coram:**

**Hon'ble Mr M V RAVINDRAN, MEMBER (JUDICIAL)**

**Hon'ble Mr MADHU MOHAN DAMODHAR, MEMBER (TECHNICAL)**

**Date of Hearing: 01.02.2018**
**Date of Decision: 01.02.2018**

**FINAL ORDER No. A/30475-30479/2018**

[**Order per: M V Ravindran, Member (Judicial)]**

1. All these appeals are disposed of by a common order as the issue that arises for consideration is the same for different periods. The appeals disposed of are as under:

| Appeal No. | O-I-O / O-I-A No. and date |
|---|---|
| E/218/2011 | O-I-O No. 22/2010-CEX. Commr. Dt. 22.10.2010 |
| E/86/2012 | O-I-O No. 10/2011-CEX. Commr. Dt. 12.10.2011 |
| E/3178/2012 | O-I-O No. 76/2012-CEX. Commr. Dt. 30.08.2012 |
| E/21647/2015 | O-I-A No.GUN-EXCUS-000-APP-023-15-16, dt. 30.04.2015 |
| E/21929/2015 | O-I-A No. GUN-EXCUS-OOO-APP-092-15-16, dt. 12.08.2015 |

2. The relevant facts that arise for consideration, after filtering out unnecessary details are that appellant is a registered assessee manufacturer of sugar, during the course of such manufacture, various joint products and by products like molasses, industrial alcohol, ethanol etc, emerge. The period involved in all these appeals is from December 2004 to April 2012, during which one of the products that is manufactured is ethanol which is both denatured and un-denatured . Appellant classified the said product under Chapter 2938 opting to pay central excise duty with cess. Revenue's claim is that the product ethanol would fall under chapter heading No. 2207 and is exempted from payment of duty; appellant having discharged the central excise duty on ethanol under chapter 29, claimed benefit of exemption on the captively consumed molasses for manufacturing of ethanol, as also the CENVAT credit of duty paid on molasses procured from other manufacturers. By a show cause notice dated 31.12.2009 and 13.04.2010 demand has been raised on the appellant by invoking the extended period, wherein Revenue wants the appellant to discharge central excise duty on molasses which are captively manufactured and consumed for manufacture of ethanol, which is exempted under notification No. 3/2005-CE (un-denatured ethyl alcohol). Subsequent show cause notices are periodical notices. Appellant

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contested the show cause notices on merits and the show cause notices dated 31.12.2009 and 13.04.2010 on limitation. Adjudicating authority did not agree to the contentions raised and held that un-denatured ethanol is classifiable under chapter 22 and is exempted from payment of duty and by virtue of section 5(A) of Central Excise Act 1944, appellant had no option to pay duty on exempted goods as notification No. 3/2005-CE was issued exempting the product unconditionally. Coming to such a conclusion, demands were confirmed alongwith interest as duty on molasses and penalties were imposed.

3. Ld. Counsel after taking the Bench through the entire case records submits that the adjudicating authority has accepted the fact that appellant had discharged the Central Excise duty on un-denatured ethanol and the said duty is far in excess of the duty ordered to be recovered on molasses. It is his submission that the entire exercise is revenue neutral and the issue of discharge of central excise duty on un-denatured ethyl alcohol was within the knowledge of the department as can be seen from various correspondence. Appellant relied upon the decisions of Narayan Polyplast [2005(179)ELT 20 (SC)], Jamshedpur Beverages [2007(214)ELT 321 (SC)], Narmada Chematur Pharmaceuticals Limited [2007 (179) ELT 276 (SC)], Punjab Tractors Ltd [2005(181) EL 380 (SC)] for the proposition that since the matter was within the knowledge of the department as to they were not availing the benefit of exemption notification and discharging duty on un-denatured ethanol, extended period cannot be invoked; that appellant had in the knowledge and wisdom classified the said product

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under chapter 29 and mere wrong classification cannot be a situation for imposition of penalties and said classification was continued based upon the earlier order of adjudicating authority (O-I-A No: CE/12/99, dated 30.09.1999), wherein it was held in favour of the appellant, wherein Commissioner dropped proceedings issued relating demand of duty on molasses captively consumed. It is his submission that the said Order-in-Original was not appealed against by Revenue and attained finality and appellant continued to follow the said order subsequently also and for the period from 31.12.2009 and 13.04.2010, Revenue has not raised any objection or directed the appellant that their action of discharging duty on un-denatured spirit is erroneous. It is his submission that the judgment of Hon'ble Apex Court in the case of Marsons Fan Industries [2008(225) ELT 334 (SC)] will apply in its full force wherein the Apex Court has settled the law that if any order has attained finality, Revenue could not have taken contrary view. It is his submission that the adjudicating authority's findings that the duty has been paid in violation of Section 3 and Section 5(A) of Central Excise Actg, 1944 on the un-denatured ethanol, be set aside.

4. Ld. DR, on the other hand, submits that classification of un-denatured ethanol is now settled issue, that the said product would fall under chapter heading 2207 as held by Tribunal in the case of Bajaj Hindusthan Sugar Ltd [2016(340)ELT 535 (Tri.-All.)] and Rajshree Sugars & Chemicals Limited [2016 (343) ELT 462 (Tri.-Chennai)]. It is his submission that once the classification in product is under chapter 22, benefit of notification 3/2005-CE needs to be availed and no duty liability should have been discharged

and the demand of duty of molasses captively consumed was correct as also demand of interest and imposition of penalties.

5. On careful consideration of the submissions made by both sides, we find that instead of entering into the arena whether the classification of un-denatured alcohol/ethanol during the relevant period in question in these appeals is 2207 or 2938, we find that the entire issue can be disposed of on the ground of revenue neutrality. We reproduce the chart indicating the duty demanded and confirmed by adjudicating authority on molasses and duty already paid by appellant on un-denatured alcohol/ethanol under chapter 29.

| Appeal No. | Period involved | OIO reference | Duty on molasses | Duty already paid on ethanol (un-denatured) |
|---|---|---|---|---|
| E/218/2011 | 12/2004 to 12/2009 | 22/2010, dt.22.10.10 | 485,27,590 | 569,76,200 |
| E/86/2012 | 01/2010 to 09/2010 | 10/2011, dt.12.10.11 | 66,01,785 | 77,69,837 |
| E/3178/2012 | 04/2011 to 12/2011 | 76/2012, dt. 30.08.12 | 113,83,406 | 122,58,239 |
| E/21647/2015 | 10/2010 to 03/2011 | 23/2015, dt. 30.04.15 | 40,37,394 | 41,61,995 |
| E/21929/2015 | 01/2012 to 04/2012 | 92/2015, dt. 12.08.15 | 41,64,702 | 43,05.874 |
| | **Grand Total** | | **747,14,877** | **854,72,145** |

6. It can be seen from the above reproduced chart that the total demand of duty on captively consumed molasses during the relevant period is approximately Rs. 7.47 Crores while duty already paid on un-denatured alcohol under chapter 29 is Rs. 8.54 crores. It can be seen that appellant had discharged more duty on un-denatured alcohol. If it is the case of Revenue that duty should not have been paid on un-denatured alcohol, then the amount which has been collected by Revenue needs to be refunded to the appellant as the amounts retained are not in accordance

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with the law. Since appellant's Counsel is not pressing the point of classification of ethanol on the ground that appellant has already discharged the duty on final products un-denatured alcohol which they should not have, we hold that due to revenue neutral situation, entire case has become one of academic exercise of no consequence. In our view, the protracted correspondence which was shown to us, also indicate that there was a stand off between the appellant and department as to discharge of duty liability on un-denatured alcohol/ethanol and it was categorically disclosed in the periodical returns filed with department tends credence to plea that extended period could not have been invoked. In our considered view, the entire issue was that of mis-interpretation, hence penalty imposed on the appellants are unwarranted.

7. We find that the question of revenue neutrality is now settled by the Tribunal in the case of Jet Airways Limited [2016(44) STR 465 (Tri.-Mum.)], which has been upheld by Hon'ble Apex Court as reported at [2017(7)GSTLJ 35 (Supreme Court), which will cover the issue in this case in the appellant's favour.

8. In view of the foregoing and also various submissions made by both sides on the issue of classification, however on the finding that the appellant has already discharged excess duty than what is demanded on molasses, we hold that the impugned order needs to be set aside and we do so.

9. We also find that the adjudicating authority has incorrectly come to a conclusion that appellant had paid duty on un-denatured alcohol/ethanol by violating provisions of Section 3 and Section 5(A) of Central Excise Act, 1944, inasmuch it is undisputed that by Order-in-Original No. CE/12/99, dt. 30.09.1999, the Commissioner had dropped similar proceedings raised on appellant for payment of duty liability on molasses captively consumed and the said order-in-original was not challenged by Revenue. In our view, appellant could have entertained the bona fide belief that they need not discharge duty on captively consumed molasses as they were paying duty on un-denatured alcohol/ethanol.

10. In view of the foregoing, all the appeals stands disposed of as indicated herein above, by setting aside the demand of duty on molasses, penalties and interest confirmed against appellants.

(Operative portion of the order pronounced in open court on conclusion of hearing)

**(MADHU MOHAN DAMODAR)**
**MEMBER (TECHNICAL)**

**(M V RAVINDRAN)**
**MEMBER (JUDICIAL)**

**VRG**