CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 864 of 2012

(Arising out of **Order-in-Original** No.25/2011 (C.Ex.) dated 21.12.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Tirupati)

Commissioner of Central Tax .. **APPELLANT**
Tirupati – GST
No. 9/86, West Church Complex,
Amaravathi Nagar, MR Palli Road,
Tirupati, Chittor,
Andhra Pradesh – 517 502.

VERSUS

Sudalagunta Sugars Ltd., .. **RESPONDENT**
Mayura Nagar,
B.N. Kandriga Mandal,
Chittor District,
Andhra Pradesh – 517 644.

APPEARANCE:

Shri M Anukathir Surya, Authorised Representative for the Appellant
None for the Respondent

CORAM: **HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30343/2023

Date of Hearing:09.10.2023
Date of Decision:09.10.2023

[ORDER PER: ANIL CHOUDHARY]

The brief facts are that the appellant is manufacturer of cane sugar and molasses which are dutiable and cleared on payment of duty. Appellant captively consumes Bagasse (which is an agricultural waste) as fuel in the boiler for generation of electricity/power. Such Bagasse is a residue after the extraction of cane juice from sugarcane, and is captively consumed for generation of power. The power so generated is consumed in manufacture of sugar and the remaining power is sold outside. It appeared to Revenue that appellant have been availing Cenvat Credit on various inputs and input services. It appeared to Revenue that under the provisions of Rule 6 of Cenvat Credit Rules, appellant is required to reverse at the specified rate under Rule 6(3) on the value of electricity cleared outside or by way of third party sale. Accordingly, show cause notice dated 06.05.2011 was issued proposing to demand Rs. 2,96,88,861/- being 10% / 5% of the value of the exempted goods/electricity cleared during the period April 2006 to March 2011, invoking the extended period of limitation.

2. Show cause notice was adjudicated vide impugned Order-in-Original dated 21.12.2011 whereby the proposed demand was dropped and an amount of Rs. 1,29,998/-, which was voluntarily reversed/paid with respect to common input/input service was confirmed. Further, interest was demanded on the amount confirmed. Penalty under Rule 15 of CCR was also dropped.

3. Being aggrieved, the Revenue is before this Tribunal.

4. Heard Learned AR for Revenue and perused the records. The Respondent assessee is absent on call inspite of service of notice.

5. Having considered the rival contentions and from perusal of the records, we find that the issue is no longer res-integra. It has been held by Hon’ble Supreme Court in DSCL Sugars Ltd., [2015 (322) ELT 769 (SC)], that Bagasse is an agricultural waste and not a manufactured and nor dutiable product. Accordingly, the provisions of Rule 6 are not attracted for clearance of electricity to third parties. Further we find, the respondent assessee have already reversed the proportionate amount of common inputs/input service. Thus on this score also, the demand under Rule 6(1) of CCR is bad.

6. Accordingly, following the ruling of the Hon’ble Supreme Court, the appeal is dismissed. Accordingly, respondent is entitled to consequential benefits, if any.

(Operative part of this Order was pronounced in court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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