CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

Division Bench - Court No. – I

Excise Appeal No. 21297 of 2014

(Arising out of Order-in-Original No.3/2014 (CE)-Commr dt.03.01.2014 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-I)

M/s Gayatri Sugars Ltd
Maagi Village, Nizamsagar Mandal,
Nizamabad Dist., Telangana – 503 302 **……Appellant**

VERSUS

Commissioner of Central Tax
Medchal - GST
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **……Respondent**

Appearance:-

Shri B. Venugopal, Advocate for the Appellant.
Shri J. Rajanish, AR for the Respondent.

Coram: **HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30515/2026

Date of Hearing: 16.09.2026
Date of Decision: 16.09.2026

[Order per: P.V. SUBBA RAO]

M/s Gayatri Sugars Ltd[1] filed this Appeal to assail the Order-in-Original dt.03.01.2014[2] passed by the Commissioner, in which he decided the proposals made in the Show Cause Notice (SCN) dt.22.05.2013 covering the period April, 2008 to March, 2013. He confirmed the demand of an amount of Rs.80,28,148/- being equal to the amount payable at 10% or 5% or 6%, as applicable from time to time, under Rule 6(3) of the Cenvat Credit Rules, 2004[3]. He also confirmed demand of appropriate interest and imposed penalty under Rule 15(2) of CCR read with section 11AC of the Central Excise Act, 1944[4].

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[1] The Appellant
[2] Impugned Order
[3] CCR
[4] The Act

2. We have heard the learned Counsel for the Appellant and learned AR for the Revenue and perused the records.

3. The facts of the case, after filtering out unnecessary details, are that the Appellant is a manufacturer of sugar and molasses on which it paid Central Excise Duty. In the process of manufacture, bagasse, a by-product, emerges when the sugarcane is crushed. The appellant uses the bagasse to produce electricity, part of which it used within the factory and part of which is sold to the State Government Power Distribution Company, APTRANSCO. Another by-product viz., Press-mud, also emerged during the manufacture of sugar, which the Appellant distributed free of cost to cane growers to use as manure.

4. The Appellant had not maintained separate accounts in respect of receipt, consumption and inventory of inputs and input services used in or in relation to manufacture of dutiable goods viz., sugar and molasses and non-dutiable goods viz., bagasse and press-mud.

5. The SCN dt.22.05.2013 proposed recovery of an amount under Rule 6(3) of CCR on the value of electricity sold to APTRANSCO, which worked out to Rs.80,07,233/-. The SCN also proposed recovery of a similar amount on the press-mud under Rule 6(3), which amounted to Rs.20,915/- (although the Appellant had not sold the press-mud but distributed it free of cost).

6. The above proposals were confirmed by the Commissioner in the impugned order along with interest and penalties. Aggrieved, the Appellant filed this Appeal.

7. The first submission of the learned Counsel for the Appellant is that no demand of amount under Rule 6(3) of CCR can be made by the department as held by the jurisdiction High Court of Telangana & Andhra Pradesh in the case of Tiara Advertising Vs Union of India[5]. He submits that various options under which the obligations can be fulfilled under Rule 6 of CCR are available to the assessee, who is free to choose any of the options. Revenue cannot choose one of the options (in this case Rule 6(3) of CCR) and demand recovery of an amount under that option.

[5] 2019 (10) TMI 27 – Telangana & Andhra Pradesh High Court

8. The alternative submission of the learned Counsel is that Hon'ble Supreme Court has decided in the case of Union of India Vs DSCL Sugar Ltd[6] that bagasse is only agricultural waste or residue and is not the result of any process of manufacture and therefore, it does not fall within the definition of manufacture under section 2(f) of the Act. Since it is not manufactured, Rule 6 of the CCR has no application to the bagasse which is produced as a by-product in the manufacture of sugar. For this reason also, the entire demand needs to be set aside.

9. The third submission of the learned Counsel is that the appellant has anyway reversed proportionate amount of Cenvat credit amounting to Rs.5,53,773/- for the purposes of this proceedings on the input services, which it had availed. Reversal of Cenvat credit is as good as not availing the Cenvat credit at all, as held by Hon'ble Supreme Court in the case of Chandrapur Magnets Pvt Ltd Vs CCE[7].

10. Learned Counsel further submits that since the demand itself is not sustainable, the demand of interest and penalties also cannot be sustained. The Appeal may therefore be allowed and the impugned order may be set aside.

11. Learned AR for the Revenue vehemently supported the impugned order.

12. We have considered the submissions advanced by both sides and examined the records. The facts of this case are identical to the facts of the **DSCL Sugars Ltd**, in which Hon'ble Supreme Court has disposed of a bunch of Civil Appeals and SLPs and has held that bagasse is only an agricultural waste or residue and it is not the result of any manufacturing process. Therefore, it cannot be treated as falling within the definition of section 2(f) of the Act. Consequently, Rule 6 of the CCR would also not apply. Paras 6 to 13 of this judgment are reproduced below.

> *"6. The aforesaid judgment was pronounced by this Court related to the period before 2008. In the year 2008 there was an amendment in Section 2(d) as well as in Section 2(f) of the Act which defines 'excisable goods' and 'manufacture' respectively. Section 2(d) with the said amendment reads as under :*

[6] 2015 (322) ELT 769 (SC)
[7] 1996 (81) ELT 3 (SC)

Section 2(d) - "excisable goods" means goods specified in [The First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt;

Explanation - for the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

7. As per the aforesaid explanation, "goods" would now include any article, material or substance capable of being bought or sold for consideration and as such goods shall be deemed to be marketable. Thus, it introduce the deeming fiction by which certain kind of goods are treated as marketable and thus excisable.

8. However, before the aforesaid fiction is to be applied, it is necessary that the process should fall within the definition of "manufacture" as contained in Section 2(f) of the Act. The relevant portion of amended Section 2(f) reads as under :

Section 2(f) - "manufacture" includes any process -

(i) incidental or ancillary to be completion of a manufactured product;

(ii) which is specified in relation to any goods in the section or Chapter notes of [The First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to [manufacture; or]

(iii) which in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;

and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production of manufacture on his own account;"

9. The Revenue sought to cover the case under sub-clause (ii) as per which the process which is satisfied in relation to any goods in the Section or Chapter notices of the First Schedule to the Central Excise Tariff Act, 1985 would amount to 'manufacture'. Here again, fiction is created by including those goods as amounting to manufacture in respect of which process is specified in the Section or Chapter notices of the First Schedule.

10. In the present case it could not be pointed out as to whether any process in respect of Bagasse has been specified either in the Section or in the Chapter notice. In the absence thereof this deeming provision cannot be attracted. Otherwise, it is not in dispute that Bagasse is only an agricultural waste and residue, which itself is not the result of any process. Therefore, it cannot be treated as falling within the definition of Section 2(f) of the Act and the absence of manufacture, there cannot be any excise duty.

11. Since it is not a manufacture, obviously Rule 6 of the Cenvat Rules, 2004, shall have no application as rightly held by the High Court.

Civil Appeal No. 9332 of 2013 : CCE v. M/s. Saryoo Sahakari Chini Mills Ltd.

12. Since Bagasse is held not to be result of any manufacture, this appeal is also dismissed.

1. *SLP(C) No. 3340 of 2013 : Union of India v. Haidergarh Chini Mills*
2. *SLP(C) No. 3342 of 2014 : Union of India v. Akbar Pur Chini Mills*
3. *SLP(C) No. 3344 of 2014 : Union of India v. Gularia Chini Mills*
4. *Civil Appeal No. 2761 of 2014 : Union of India v. Manakpur Chini Mills*
5. *Civil Appeal No. 2762 of 2014 : Union of India v. Kumbi Chini Mills*
6. *Civil Appeal No. 2763 of 2014 : Union of India v. Manakpur Chini Mills*
7. *SLP(C) No. 10273 of 2014 : Union of India v. Upper Ganges Sugar & Ind. Ltd.*
8. *Civil Appeal No. 1231-1232 of 2014 :*

13. Cenvat Credit in respect of electricity was denied only on the premise that Bagasse attracts excise duty and consequently Rule 6 of the Cenvat Credit Rule is applicable. Since this action of the appellant is found to be erroneous, all these appeals of the Revenue also stand dismissed."

13. On this ground alone, the impugned order deserved to be set aside. We also find force in the submission of the learned Counsel that demand for an amount under Rule 6(3) of the CCR cannot be raised by the department as held in **Tiara Advertising** by the jurisdictional High Court. We also find force in the submission of the learned Counsel that when the proportionate amount of Cenvat credit is reversed, it is as good as not availing any Cenvat credit at all, as held by Hon'ble Supreme Court in the case of **Chandrapur Magnets Pvt Ltd**.

14. In view of the above, we find that the impugned order cannot be sustained. We allow the Appeal and set aside the impugned order with consequential relief to the Appellant.

(Operative Part of the Order was pronounced in the Open Court)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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