**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA**
**EASTERN ZONAL BENCH: KOLKATA**

**Appeal No.E/76940/2017 & E/75305-75306/2018**

(Arising out of Order-in-Appeal No.13-15/Pat/CEx/Appeal/2017-18 dated 25.08.2017 passed by the Commissioner (Appeals) of Customs, GST & Central Excise, Patna)

M/s. Magadh Sugar & Energy Ltd.

Applicant (s)/Appellant (s)

**Vs.**

Commissioner of Central Excise, Patna

Respondent (s)

Appearance:

Shri Amit Kumar, Advocate for the Appellant (s)
Shri S.Mukhopadhyay, Sutpd.(AR) for the Respondent (s)

**CORAM:**
**Hon'ble Shri P.K.Choudhary, Member (Judicial)**

Date of Hearing/Decision:- 27.03.2018

ORDER NO.FO/76150-152/2018

**Per Shri P.K.Choudhary**

Since all the three appeals are arising out of common order the same are taken up together for disposal.

2. Briefly stated the facts of the case are that the appellants M/s. Magadh Sugar & Energy Ltd. (Unit of Bharat Sugar Mills ) is engaged in the manufacture of sugar and molasses classifiable under Chapter 17 of the CETA, 1985. During the process of manufacturing of the said final product, Bio Compost, Bio-Fertiliser, Wormi Compost and Press Mud in the form of waste are generated, which the appellants sold. Since the appellants did not follow the procedure prescribed under Rule 6 of Cenvat Credit Rules, 2004 for maintenance of separate records and for payment of amount in respect of

such waste product removal from the factory, the department initiated show cause proceedings against the appellant for confirmation of the amount in terms of Rule 6 read with Section 11A of the Central Excise Act, 1944. The matter was adjudicated against the appellant. In appeal the Ld. Commissioner (Appeals) upheld the adjudication order and rejected the appeals filed by the assessee. Hence the present appeals before the Tribunal.

3. Ld. Advocate appearing on behalf of the appellants submits that the issue arising out of the present dispute is no more res-integra in view of the decision of the Tribunal in the case of Commissioner of Central Excise and Service Tax, Patna vs. Riga Sugar Company Ltd.[2016 (SCC) online CESTAT 1482] wherein this Tribunal has considered that Bio Compost, Bio Fertiliser and Wormi-Compost as waste product as exempted excisable goods. Thus, he submits that adjudicated demand confirmed against the appellant cannot be sustained in view of the provisions of law.

4. Ld. A.R. appearing on behalf of the Revenue reiterates the findings recorded in the impugned order and further submits that the appellant is liable to pay the amount under Rule 6 of Cenvat Credit Rules, 2004 w.e.f. 01.03.2015 in view of the explanation -1 appended to the said Rule.

5. Heard both sides and perused the appeal records.

6. I find that the issue arising out of the present dispute is whether press mud, bio-compost, bio-fertiliser and wormi compost are to be considered as exempted products. The Tribunal has held in the case of Commissioner of Central Excise & Service Tax, Patna vs. Riga Sugar Company Ltd. (supra) that waste product will not fall under the purview of exempted product and accordingly the provisions of Rule 6(3) are not applicable. The relevant portion of the said decision is reproduced below for ready reference:

"4.*Heard both sides and perused the case records. The issue involved in the present proceedings is whether Respondent is required to discharge an amount equivalent to 5% / 8% of the value of Bagasee, Press mud & Bio-compost sold by the Respondent. It is observed from paragraph -11 of the Apex Court's decision in the case of Union of India vs. DSCL Sugar Ltd. that provisions of Rule 6 of CCR shall have no application as Bagasee is not a product of manufacture. Provisions of Rule 6(3) of the CCR are applicable only to a situation where exempted as well as dutiable products are manufactured by an assessee out of common inputs and no separate records are maintained. It has been held by the Apex Court that no manufacturing activity is under taken with respect to a product like Bagasee, which is only an agricultural based residue and is not a result of any process of manufacture. The same is true to the products Press mud and Bio-compost. Accordingly Respondent is not liable to pay 5% / 8% of the sale proceeds of these products in the light of law laid down by the Apex Court."*

7. In view of the above decision of the Tribunal, I am of the considered opinion that the appellant was not liable to pay the amount as contemplated under Rule 6 (3) of the Cenvat Credit Rules, 2004. However, I find that Rule 6 of the Rules, was amended w.e.f. 01.03.2015, wherein Explanation I was appended, providing that :

*"Exempted goods or final products as defined in clauses (d) and (h) of Rule 2 shall include non-excisable goods cleared for a consideration from the factory."*

The effect of amendment of Rule 6 ibid is that the benefit of claim of non-application of Rule 6, shall not be available to the waste/by-product, if the same are cleared from the factory on receipt of consideration. In this case, since the appellant had removed Bio-compost, Bio-Fertiliser, Wormi Compost and Press Mud upon receipt of consideration from the buyers, it is squarely covered under the Explanation appended to Rule 6 w.e.f. 01.03.2015. Therefore, the appellant is liable to pay amount as contemplated under Rule 6 (3) ibid. Accordingly, the matter is remanded to the Adjudicating Authority to segregate the demand for the month of March, 2015. For rest of the period the appeal is allowed.

8. In line with the above observations, after setting aside the impugned order, I remand the matter to the adjudicating authority for segregation of the demand for the month of March, 2015 and for rest of the period the appeal is allowed.

9. Appeals are disposed of in the above manner.

(Operative Portion of the order has already pronounced in the open court)

S/d.
**(P.K.Choudhary)**
**MEMBER (JUDICIAL)**

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