IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/229/2009

(Arising out of Order-in-Original No. 09-10/Denovo/MP/Commissioner/2009 dated 28/02/2009, passed by the Commissioner of Central Excise and Service Tax, Patna.)

M/s. S. C. I. Indian Ltd. Appellant (s)
Vs.

Commr. Of Central Excise, Patna Respondent (s)

Appearance
Ananda Sen, Adv., Setu Das Roy, Adv. & Sabyasachi Mandal, Adv. for the Appellant
Shri A. Roy Suptd. (A. R.) for the Revenue

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing-17.12.2018

ORDER NO. FO/77144/2018

PER Bench

The present appeal is against the Order-in-Original No. 09-10/Denovo/MP/Commissioner/2009 dated 28/02/2009.

2. The brief facts of the case are as follows:-

(i) The appellant is a distiller, engaged in the preparation of Alcohol fit for human consumption as well as denatured Ethyl Alcohol which is an excisable commodity under CETH 2204.10 of the Central Excise Tariff Act, 1985 on the relevant time. The appellant procures duty paid molasses for use in their factory. Substantial portion of the molasses gets consumed in the preparation of Alcohol fit for human consumption which is not an excisable product, since they are liable for State Excise

Duties. The appellant themselves have been following the practice of reversing the portion of the Cenvat Credit taken on the molasses in respect of alcohol fit for human consumption. The dispute covers two periods-(i) March, 2005- October, 2005 & (ii) June, 2006-November, 2006. 3. The Revenue issued Show Cause Notices separately covering the above two periods proposing to disallow the entire Cenvat Credit availed. The dispute pertaining to the period March-October, 2005 was initially decided by the Lower Authority by issue of Order-in-Original dated 22/12/2006 in which he ordered for reversal of the entire Cenvat Credit availed. The appeal against the order of the Adjudicating Authority came up before the Tribunal when the Tribunal set aside the order and remanded the matter vide Final Order No. S-585/A-1287/KOL/07 dt. 27/06/2007 with the following observations:-

"Further, we find that the main Rule 3 of the Cenvat Credit Rules, 2004 allows a manufacturer of final product to take credit of duty on inputs. The expression "Final Product" has been defined as excisable goods under Rule 2 of the said rules. In view of the fact that Ethyl Alcohol for human consumption is not excisable, the same also cannot be treated as final products. Accordingly, under Rule 3, no credit of the duty paid on inputs i.e. molasses, used in such Ethyl Alcohol is admissible to the appellants. Hence, the proportionate credit taken on molasses for production of Ethyl Alcohol for human consumption is not admissible. Hence, we set aside the demand for the entire amount of CENVAT Credit taken by the appellants and remand the matter to the Original Authority for determining the amount of credit taken in respect of non excisable goods and confirm the demand to that extent only. The Original Authority shall also allow a reasonable opportunity that they have already reversed credit in respect of inputs used in non excisable goods, as claimed before us."

4. The present impugned order was passed in the denovo proceedings in which the Commissioner also included the demand for the subsequent period June to November 2006. For both the periods, the Adjudicating Authority took the view that the whole of the credit availed on molasses is to be reversed since Ethyl Alcohol has been manufactured in the first stage which is non-excisable and only denatured Ethyl Alcohol is an Excisable product.

5. He further took the view that since Ethyl Alcohol emerges first and thereafter utilized for different purposes, the credit of duty paid on molasses is entirely not admissible. Hence, the present appeal against the impugned order.

6. The appellant is represented by Shri Ananda Sen, Setu Das Roy and Sabyasachi Mandal, Ld. Advocates and Revenue is represented by Shri A. K. Roy, Ld. DR.

7. The Ld. Counsels for appellant submitted that the impugned order is totally unjustified and made the following specific arguments:

(i) The Tribunal in the Remand Order in the earlier proceedings had clearly mentioned that only the proportionate credit taken on molasses utilized for production of Ethyl Alcohol for human consumption is not admissible. The issue was remanded only for the limited purpose of quantifying such demand. They submitted that the Ld. Commissioner has passed the impugned order disallowing entire Cenvat Credit by disregarding the direction of the Tribunal.

(ii) They also submitted that the appellant has Suo Motto being reversing proportionate credit and as such admits the liability to such an extent.

(iii) Since the practice adopted was very much in the knowledge of the Department, they prayed that the demand may be restricted to the proportionate credit reverse in respect of Ethyl Alcohol fit for human consumption only. The penalty may be set aside.

8. The Ld. DR justified the impugned order.

9. The dispute pertains to the reversal of Cenvat Credit availed on duty paid molasses. Molasses has been used by the appellant in their factory for preparation of Ethyl Alcohol. Bulk of such Ethyl Alcohol is used for producing alcohol fit for human consumption on which there is no Central Excise Duty. However, the denatured spirit is subject to Central Excise Duty. The Tribunal in the earlier round of litigation had given a very clear direction that the appellant is liable for reversal of only that proportion of the credit attributable to the quantum of molasses utilized in the preparation of alcohol fit for human consumption. Inspite of such specific direction, the Adjudicating Authority has proceeded to deny the entire Cenvat Credit availed on duty paid molasses in total

disregard of the Tribunal's directions. We find no justification for such view taken by the Adjudicating Authority.

10. The amount of credit attributable to the quantum of molasses used in the preparation of alcohol fit for human consumption is being reversed Suo Moto periodically. The demand to this extent also stands admitted by the appellant. Under these circumstances, we modify the impugned order and uphold the demand only to the extent of credit on molasses used in alcohol for human consumption. We remand the matter to the Adjudicating Authority for the limited purpose of verifying the correctness of such reversal already made by the appellant.

11. In the circumstances of the case, we find no justification for imposition of penalty which is set aside.

12. In the result, appeal is partly allowed.

(Dictated and Pronounced in the Open Court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(V. PADMANABHAN)
MEMBER (TECHNICAL)

Pooja