CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 910 of 2011

(Arising out of Order-in-Appeal No. PII/AV/25/2011 dated 26.04.2011 passed by the Commissioner of Central Excise (Appeals), Pune II)

M/s. Galaxy Sugar .....**Appellant**
Plot no. 890/6, Nagaon
Near Menon Piston Ltd.
Opp. MIDC, SHiroli
Kolhapur

Vs.

Commissioner of Central Excise, Kolhapur .....**Respondent**
Vasant Plaza,
Rajaram Road,
Kolhapur

APPEARANCE:

Shri V.B. Gaikwad, Advocate for the appellant
Shri Anil Choudhary, DC(AR) for the respondent

CORAM:
Hon'ble Dr. D.M. Mishra, Member (Judicial)
Hon'ble Mr. P. Anjani Kumar, Member (Technical)

FINAL ORDER No: A/86128 / 2019

DATE OF HEARING : 18.06.2019
DATE OF DECISION : 18.06.2019

PER: Dr. D.M. Mishra

Heard both sides. This is an appeal filed against order-in-appeal no. PII/AV/25/2011 dated 26.04.2011 passed by the Commissioner of Central Excise (Appeals), Pune

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of excisable goods namely 'big crystal sugar' and 'bura sugar' falling under Chapter 1701 of Central Excise Tariff Act, 1985. The appellant during the relevant period claimed the benefit of exemption Notification No. 3/2005-CE dated 28.02.2005 and cleared their goods without payment of duty. Later, department alleging that the benefit of notification is not available, issued Show Cause Notice for recovery of duty along with interest and penalty. On adjudication, the demands were confirmed from time to time. On appeal, ld. Commissioner confirmed the order of the adjudicating authority, hence the present appeal.

3. At the outset, ld. Advocate for the appellant does not dispute the fact that the appellants are not eligible to the benefit of notification no. 3/2005-CE dated 28.02.2005 and required to discharge duty for the relevant period. However, he submits that in discharging the duty they should be allowed to utilize the CENVAT credit availed on various eligible 'inputs' namely, sugar and packing materials. He submits that this Tribunal considering the demand for the period January 2009 to March 2009 has allowed the CENVAT credit to be utilized in discharging the duty liability for the said period and remanded the matter to the adjudicating authority. He submits that the present appeal be also remanded.

4. Ld. AR reiterates the findings of the Commissioner (Appeals).

5. We have carefully considered the submission made by both sides and perused the records.

6. We find that in similar facts and circumstances for the subsequent period, this Tribunal analyzing the facts observed as follows:

> "5.1. The appellant has not disputed the tax liability. Their only plea is that they are entitled for the CENVAT credit lying to their credit as on 7.1.09 and also CENVAT credit in respect of raw materials used in the manufacture of big crystal sugar. Therefore, if they are required to pay excise duty during the impugned period, their claim for CENVAT credit also be considered. I find merit in their argument. Accordingly, I remand the case back to the original adjudicating authority to consider the claim of the appellant for CENVAT credit amounting to Rs.6,51,705/- (Rs.2,97,932/- lying in their credit account on 7.1.2009 plus Rs.3,59,278/- being the credit admissible of the duty paid) on the raw material used in the manufacture of big crystal sugar subject to production of necessary documents and thereafter determine the differential duty liability, if any.
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> 6. Thus the appeal is allowed by way of remand. Needless to say the appellant should be heard before passing any order in the matter."

7. Considering the said precedent, we also remand the matter to the adjudicating authority to allow CENVAT credit to be utilised in discharging their duty liability, in the light of above observation. Appeal is allowed by way of remand to the adjudicating authority.

(Operative part pronounced in Court)

(Dr. D.M. Mishra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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