CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

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Excise Appeal No. 1089 of 2012

(Arising out of Order-in-Original No. 16/CEX/COMMR/KOP/2012 dated 29.03.2012 passed by the Commissioner of Central Excise, Kolhapur)

M/s. Jawahar S.S.S.K. Ltd. .... Appellant
Kallappanna Awadnagar, Hupari-Yelgud Road
Tal. Hatkanangale, Kolhapur-416203

Versus

Commissioner of Central Excise, Kolhapur .... Respondent
Vasant Plaza, Rajaram Road,
Kolhapur-416 003.

With

Excise Appeal No. 1090 of 2012

(Arising out of Order-in-Appeal No. PII/RKS/112 to 130/2012 dated 19.04.2012 passed by the Commissioner of Central Excise, Pune-II)

M/s. Jawahar S.S.S.K. Ltd. .... Appellant
Kallappanna Awadnagar, Hupari-Yelgud Road
Tal. Hatkanangale, Kolhapur-416203

Versus

Commissioner of Central Excise, Kolhapur .... Respondent
Vasant Plaza, Rajaram Road,
Kolhapur-416 003.

Appearance:

Shri V.B. Gaikwad, Advocate for the Appellant

Shri Anil Choudhary, DC (AR), for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87250-87251/2019

Date of Hearing: 05.12.2019

Date of Decision: 05.12.2019

Per: Dr. D.M. Misra

These two appeals are filed by the appellant challenging the Order-in Original No. 16/CEX/COMMR/KOP/2012 dated

29.03.2012 passed by the Commissioner of Central Excise, Kolhapur and another against Order-in-Appeal No. PII/RKS/112 to 130/2012 dated 19.04.2012 passed by the Commissioner of Central Excise (Appeals), Pune. Since these appeals involve common issues, the same are taken up together for disposal.

2. Briefly stated the facts of the case (Appeal No. E/1089/ 2012) are that the appellants are engaged in the manufacture of sugar and molasses falling under Chapter 1701 and 1703 of Central Excise Tariff Act, 1985. Alleging that during the period November, 2009 to June, 2010, the appellant had cleared the exempted goods namely, Bagasse/Pressmud emerged as a by-product/waste, without reversing the amount required under Rule 6(3)(i) of the CENVAT Credit Rules, 2004, show-cause notice was issued to them on 13.07.2011 for recovery of the amount of Rs.42,83,185/-, being 5% of the value of the bagasse sold by them. On adjudication, the demand was confirmed with interest and penalty. On similar issue (Appeal No.E/1090/ 2012), another show cause was issued to the appellant for the period Jul 2010 to Mar 2011 demanding a total amount of Rs.44,83,189/-. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeals.

3. Learned Advocate for the appellant submits that whether Rule 6 is applicable to bagasse/pressmud emerging as byproduct/waste during the course of manufacture of sugar and molasses, has now been settled in their favour in their own case reported as *Athani Sugars Ltd. Vs. Commissioner of Central*

Excise – 2017-TIOL-4280-CESTAT-MUM and also in other case *Shree Narmada Khand Udyog Vs. Commissioner of Central Excise – 2018 (8) TMI 1075-CESTAT-AHMD and Pannageshwar Sugar Mills Ltd. Vs. Commissioner of Central Excise – 2018 (10) TMI 966-CESTAT-MUM*. Therefore, the impugned order is bad in law and not sustainable. Further, he has submitted that for the subsequent period from Dec 2011 to Feb 2015 demands have been dropped by the Department.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. We find that the issue of applicability of Rule 6(1) of CENVAT Credit Rules, 2004 to bagasse/pressmud which emerges during the course of manufacture of sugar and molasses, has been settled taking note of the judgment of Hon'ble Supreme Court in the case of *Union of India Vs. DSCL Sugar Ltd. – 2015 (322) ELT 769 (SC)* in favour of the assessee in the aforesaid cases. In *Shree Narmada Khand Udyog (supra*), this Tribunal observed as follows: -

> "5. I find that the department has dropped the demand on the byproduct "Bagasse" for the period prior to 01.03.2015. However, on insertion of explanation I to Rule 6 of CCR, 2004 by virtue of Notification No. 6/2015-CE(NT) dt. 1.3.2015 a view was taken by the department that bagasse being not an excisable goods and cleared from the factory, against consideration, therefore, would come within the scope of Rule 6 of the CCR, 2004. The said provision, reads as follows:-
>
> > *"Explanation I. – For the purposes of this Rule, 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".*

Reading the aforesaid explanation-I reveals that non-excisable goods cleared for consideration, would fall within the scope of the said Rule. The contention of the Revenue is that since, the "exempted goods", "final products" defined under the Cenvat credit Rules,2004 in clause (d) and clause (h), respectively include non-excisable goods, which is cleared for consideration from factory, hence Rule 6(1) is applicable to the by-product bagasse. Clause (d) and (h) of the said Rule reads as follows:-

> *"(d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty;*
> *(h) "final products" means excisable goods manufactured or produced from input, or using input service;"*

6. The amended definition of 'excisable goods' and 'manufacture', have been considered by the Hon'ble Supreme Court in DSCL Sugar Ltd's case (supra). Their Lordships observed as follows:-

> *"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 if is not a manufacture, obviously Rule 6 of the Cenvat Rules, 2004, shall have no application as rightly held by the High Court."*

7. Following the aforesaid ratio, I do not have any hesitation to hold that even after amendment to Rule 6 of CCR, 2004, 'bagasse' which emerges as a waste/by-product, accordingly, falls outside the scope of the Rule, 6 of the Cenvat Credit Rules, 2004. In the result, the impugned order is set-aside and the appeal is allowed with consequential relief, if any, as per law."

7. The principle laid down in DSCL Sugar Limited's case, has been accepted by the Department by issuance of Circular No. 1027/15/2016-CX dated 25.04.2016. Thus, following the ratio

laid by the Hon'ble Apex Court in DSCL Sugar Limited's case, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the Court)

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

(Sanjiv Srivastava)
Member (Technical)

Sinha/sidharth