CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 86176 of 2019

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/614-615/18-19 dated 10.01.2019 passed by the Commissioner of GST & Central Excise (Appeals), Nashik.)

M/s Vikas SSK Ltd. ....Appellant
Unit-II, A/P- Tondar,
Tal. Udgir, Dist.- Latur,
Maharashtra

VERSUS

Commissioner of Central Excise & Service Tax, Aurangabad ....Respondent
N-5, Town Centre, CIDCO,
Aurangabad, Maharashtra – 431 030

<u>AND</u>

Excise Appeal No. 86178 of 2019

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<u>APPERANCE:</u>

Shri J.N. Somaiya, Advocate for the Appellant
Shri Sanjay Hasija, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85242-85243/2022

Date of Hearing: 12.01.2022
Date of Decision: 12.01.2022

Two Orders-in-Original passed by the Adjudicating Authority confirming duty demand of Rs.81,368/- equal to 6% of sale value of bagasse and an amount of Rs.11,069/- as 6% of pressmud sale value alongwith interest and penalty under Section 11 of the Central Excise Act, 1944 read with Rule 14 of the CENVAT Credit Rules, 2004 against the appellant, that has been reaffirmed by the Commissioner (Appeals) in his above noted Order-in-Appeal is assailed in these appeals.

2. I have heard submissions from both sides, gone through relevant judicial decisions and also perused the case record. As can be noticed the relevant period covered in the demand period is from December, 2015 to March, 2016 and during that period bagasse and pressmud which were held in the judgment of Hon'ble Supreme Court pronounced in the case of *Union of India & Others Vs. M/s. DSCL Sugar Ltd. & Others reported in 2015 (322) ELT 769* as not manufacture items, for which Rule 6 of CENVAT Credit Rules, 2004 was made inapplicable. It prompted the Respondent to insert Explanation 1 & 2 in Rule 6(1) of CENVAT Credit Rules, 2004 w.e.f. 01.03.2015 by providing that exempted goods or final products shall

include non-excisable goods cleared for consideration from the factory, was enforced enabling the Respondent-Department to raise a demand against the appellant who was basically engaged in manufacturing of sugar and molasses.

3. It would be of interest to reproduce the reasoning found available in the Order-in-Appeal, in its relevant para 20 & 21.

> *"20. The appellant has also placed reliance on the case law of DSCL Sugar Ltd., [2015 (322) ELT 769 (SC)] on the issue of bagasse. In this context, in all humility it is observed that the ratio-decidendi as laid down by the Hon'ble Apex Court in the case of Jai Bhagwan Oil and Flour Mill Ltd., (supra) was apparently not presented before the Hon'ble Court in the matter of DSCL Sugar Ltd., (supra). Hence, the Hon'ble Court in the DSCL case did not have an occasion to examine the case in view of the aforementioned Jai Bhagwan case (supra). Therefore, in all humility, it is felt that the DSCL Sugar case law does not apply squarely to all matters of by-products, as determined above.*
>
> *21. Considering the above analyses and discussion and the legislative intent behind the amendment brought in Rule 6 of CENVAT Credit Rules, 2004, vide Notification No. 06/2015-CE (NT), w.e.f 01.03.2015, the products like Bagasse, Press Mud etc. being marketable cannot be considered as 'non-manufactured' during the course of manufacture of sugar anymore. The question of these products not having generated out of manufacture is thus ruled out. Therefore, the demand of an amount equal to 6% of the value of the manufactured exempted/non-excisable goods like bagasse, pressmud etc., under Rule 6(3)(b) of CENVAT Credit Rules, 2004 as it stands post 01.03.2015 with the issuance of Notification No. 06/2015-CE (NT) dated 01.03.2015 by virtue of which manufactured non-excisable goods are even brought within the ambit of the said Rule 6, ibid, for the purpose of such payment of an amount as confirmed by the lower authority is just and legal and does not require any intervention."*

A close reading of above two paragraphs would clearly reveals that the Commissioner (Appeals) had not tried to distinguish the judgment passed by the Hon'ble Supreme Court in *M/s. DSCL Sugar Ltd. & Others* case but had got beyond his authority to hold that the said judgment is *per incuriam* in an indirect way by holding that *ratio* of its earlier order passed in the case of *Jai Bhagwan Oil & Flour Mill Ltd.* had not been placed before the Hon'ble Supreme Court and thereby disregarded the importance and value of judicial precedent. In this context, it is worthwhile to refer to the judgment of Hon'ble Supreme Court passed in the case of *Gangadhara Palo Vs. RDO reported in [2012 (25) STR 273 (SC)]* in which it was stated that judgment of the Hon'ble Supreme Court containing reasons, however meagre (even one sentence) confirming the order appealed against, attains finality and it is binding on the parties. Moreover, in *M/s. DSCL Sugar Ltd. & Others* case not only the term "manufacture" was defined but other related terms like "excisable goods", "other products" were all discussed with reference to Section 2 of the Central Excise Act containing definition and the ultimate finding that emerged was that bagasse emerges as a residue/agriculture waste of sugarcane that has not emerged through the result of any process and hence not covered within the definition of Section 2(f) of the Central Excise Act dealing with "manufacture".

4. Be that as it may, both the show-cause notices which were adjudicated upon have dealt with the general provisions of CENVAT

Credit Rules, 2004 and not the newly inserted Explanation 1 & 2 in Rule 6(1) that came into effect from 01.03.2015. Further, as has been argued by the learned Counsel for the appellant in *M/s. Balrampur Chinni Mills Ltd. case reported in 2019 (5) TMI 972*, Hon'ble Allahabad High Court had given a clear finding to the effect that the *ratio* laid down in the judgment of Hon'ble Supreme Court in *M/s. DSCL Sugar Ltd. & Others* case still holds the field after the insertion of explanation that was further explained through the Circular date 25.04.2016 (after the disputed period) treating bagasse to be none excisable goods, for which the Circular was quashed that was issued to explain the insertion of Exception 1 & 2 in Rule 6(1) w.e.f. 01.03.2015. It is needless to mention here that pressmud is a similar by-product and treated at par with bagasse, to which effect several decisions including the one reported in 2020 (2) TMI 140 CESTAT-Mumbai has been cited by the learned Counsel for the appellant. Hence the order.

ORDER

5. Both the appeals are allowed and the order passed by the Commissioner of GST & Central Excise (Appeals), Nashik vide Order-in-Appeal No. NSK/EXCUS/000/APPL/614-615/18-19 dated 10.01.2019 is hereby set aside.

(Pronounced in open Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad