CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 86803 of 2019

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/562/18-19 dated 31.12.2018 passed by the Commissioner of GST & Central Excise (Appeals),Nashik.)

M/s Samarth SSK Ltd. ....Appellant
Tirthpuri, Ghansawangi,
Jalna, Maharashtra

VERSUS

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

APPERANCE:

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/85487/2022

Date of Hearing: 09.05.2022
Date of Decision: 09.05.2022

Confirmation of demand against clearance of Bagasse and Press Mud without following Rules 6(3)(i) of the CENVAT Credit Rules, 2004 that prescribed payment of an amount at the rate of 6% for not maintaining separate accounts for input services used on manufacture of goods chargeable to duty and exempted goods, holding Bagasse and Press Mud as exempted goods.

2. Factual back drop of the case, in a nutshell, is that Appellant Company is a manufacturer of Sugar and Molasses of which Bogasse and Press Mud where by-products. It has been availing Cenvat Credits on inputs, Capital goods and on input services as provision of Cenvat Credit Rules, 2004 (CCR). During scrutiny of the Appellant's company record by the Respondent-Department, it was noticed that Appellant was not maintaining separate records for both dutiable goods namely Sugar, Molasses and exempted goods namely Bagasse and Press Mud though they were using common inputs like Phosphoric Acid, Caustic Soda, Thinner, Sulphur etc. and all other common input services like Repair & Maintenance, Manpower Recruitment, GTA & Telephone etc. It was noticed to reverse an amount equal to 6% of the value of exempted goods as per provisions of Rules 6(3) of the CCR, 2004. Matter was adjudicated upon, demand including interest and penalty etc. were confirmed both at the adjudication level and Commissioner (Appeals) level, Hence the appeal.

3. During the course of hearing learned Counsel for the Appellant Mr. J. N. Somaiya submitted that the issue is no more *res integra* in view of series of decision passed by this Tribunal, which were being confirmed even by the Apex Court. With reference to the judgment of Hon'ble Allahabad High Court passed in the case of *Balrampur Chini Mills Ltd. V/s Union of India* reported in *2019 (5) TMI -972 (Allahabad)* and the final order passed by this Tribunal in Appellant's own case vide Order No. A/86668/2019 wherein Appellant's appeal against

confirmation of such duty for the previous period from April, 2015 to January, 2016 was struet down. He was categorical in referring to the above referred judgment and to the decision of this Tribunal passed on 12.01.2022 in the case of M/s Vikas SSK Ltd. wherein it was clearly held that the amended provisions under Rule 6(3)(i) including its clearificatory Circular dated 25.04.2016 would have no effect on Bagasse which is non-excisable goods.

4. In response to such submissions learned Authorised Representative for the Respondent-Department argued in favour of the reasoning and rationality of the order passed by the Commissioner (Appeals) and sought no interference of this Tribunal in such reasoned order.

5. I have perused the case record, relevant provisions of law and the relied upon case laws. As could be noticed in the Appellant's own case pertaining to the previous period, reference has been made to the Hon'ble Allahabad High Court's judgment striking down the amended Rules 6 and quashing Revenue's Circular dated 25.04.2016. It can also be noticed from the judgment of in M/s Vikas SSK Ltd. cited *supra* that Hon'ble Allahabad High Court had even observed that the judgment of *Hon'ble Supreme Court in M/s DSCL Sugar Ltd.* & others reported in *2015 (322) ELT 769 (SC)* still holds the field even after the insertation of explanation, that was further explained through Circular dated 25.04.2016.

6. Demand for the previous period in respect of Appellant that was decided finally in Appeal No. A/86668/2019 pertains to pre-amended period and this appeal for the period from February, 2016 to June, 2017 relates to post-amended period but judicial decisions is consistent in this aspect that Bagasse and Press Mud are non-excisable agricultural products to which Rules 6(3)(i) would not be applicable. In following the judicial precedent set by this Tribunal and the Hon'ble High Court of Allahabad, the following order is passed.

ORDER

7. The appeal is allowed and the order passed by the Commissioner of GST & Central Excise (Appeals), Nashik vide Order-in-Appeal No. NSK/EXCUS/000/APPL/562/18-19 dated 31.12.2018 is hereby set aside.

(pronounced in open Court.)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

sujeet