**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**MUMBAI**

REGIONAL BENCH - COURT NO. 01

**Excise Appeal No. 662 & 663 of 2012**

(Arising out of Order-in-Appeal No. P.III/RS/30-31/2012 dated 31.01.2012 passed by Commissioner (Appeals) Central Excise, Pune-III)

**Sidheshwar Sahakari Sakhar Karkhana Ltd.** **.....Appellant**
Kumthe Taluka, North Solapur,
Solapur-413224.

*VERSUS*

**Commissioner of Central Excise and Service Tax, Pune-III** **.....Respondent**
ICE House 41-A, Sasson Road,
Opposite Wadia College, Pune-411001.

**Appearance:**

None for the Appellant
Shri Sanjay Hasija Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85906-85907/2022**

Date of Hearing : 04.01.2022
Date of Decision : 04.01.2022

**PER : S.K. MOHANTY**

The appellant herein is engaged *inter alia*, in manufacture of Sugar and allied products, classified as excisable goods as per the schedule to the Central Excise Tariff Act, 1985. The appellant avails Cenvat Credit of Central Excise Duty paid on the inputs and capital goods and service tax on the input services. During the course of manufacture of Sugar and Molasses (duty paid goods), Micronutrients (fertilizers) and Pressmud emerged as a by-product/waste. Such by-products attract 'Nil' rate of duty and accordingly, the appellant sold the same without payment of Central Excise duty. The department in this case, had entertained the view that the appellant was required to follow the procedures laid down under Rule 6 (3) of the Cenvat Credit Rules, 2004. Since the appellant did not maintain separate accounts in respect of dutiable and exempted goods, show cause proceedings were initiated, seeking payment of an amount @5% in respect of the exempted goods cleared by the appellant from their factory. The matter arising out of the show cause notice was adjudicated, wherein the original authority has confirmed the demand of Rs. 1,07,393/- along with interest and also imposed equal amount of penalty on the appellant. On appeal against the adjudication order dated 14.11.2011, the learned Commissioner (Appeals) vide the impugned order dated 08.02.2012 has upheld confirmation of the adjudged demand. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. None appeared for the appellants. Heard learned Authorized Representative for the Revenue and perused the records.

3. The fact is not under dispute that micronutrients (fertilizer) and pressmud emerged as the by-products during the course of manufacture of the dutiable final product i.e. sugar. The appellant had never intended to manufacture those by-products and during the course of manufacture of the dutiable goods, such product emerged in the form of waste/residue. Emergence of such by-products cannot be considered as exempted goods for the purpose of payment of an amount at a percentage basis, in terms of Rule 6 *ibid*. The issue arising out of the present dispute is no more res integara, in view of the judgment delivered by the Hon'ble Allahabad High Court in the case of Balrampur Chini Mills Ltd. Vs. Union of India – 2014 (300) ELT 372 (All.). It has been held in the said case that the provisions of Rule 6 *ibid* shall not be applicable in respect of sale of Bagass/Pressmud/Bio-Composed, as the same are not the manufactured products and considered as waste in the process of manufacture of final product.

4. In view of the settled position of law, the issue arising out of the present dispute is no more open for any debate and as such, the impugned order confirming the adjudged demands cannot not be sustained. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Operative part of the order pronounced in the open court)

**(S. K. Mohanty)**
**Member (Judicial)**

**(Sanjiv Srivastava)**
**Member (Technical)**

*Sm*