

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Excise Appeal No. 85288 of 2021

(Arising out of Order-in-Appeal No. NSK-EXCUS-000-APPL-25-2020-21 dated 14.07.2020 passed by the Commissioner (Appeals), CGST & Central Excise, Nashik)

Bhaurao Chavan SSK Ltd.Appellant
Unit I, Laxminagar, Tal. Ardhapur
Dist. Nanded

VERSUS

Commissioner of CGST & Central Excise,Respondent
Aurangabad
N-5 Town Centre, CIDCO
Aurangabad

APPEARANCE:

Shri J.N. Somaiya, Advocate for the appellant
Shri Amrendra Kumar Jha, DC (AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/86085/2023

DATE OF HEARING : 17.04.2023
DATE OF DECISION : 11.07.2023

Per: AJAY SHARMA

The instant appeal is filed assailing the impugned order dated 14.7.2020 passed by the Commissioner (Appeals), CGST & Central Excise, Nashik rejecting the appeal filed by the appellant and upholding the recovery of the amount equal to 6% of sale value of Bagasse, Press mud, boiler ash and Sludge under Rule

6(3) of the Cenvat Credit Rules, 2004 alongwith interest and penalty.

2. The issue involved herein is whether the appellant is liable to pay an amount equal to 6% of the sale value of exempted goods/products i.e. Bagasse, press mud, boiler ash and sludge generated during the manufacturing of sugar/molasses in terms of Rule 6(3) of Cenvat Credit Rules, 2004?

3. The appellants are manufacturer of sugar, molasses and ethyl alcohol and during the process of manufacturing sugar and molasses various by products bagasse, press mud, boiler ash and sludge were generated which, as per the appellants, are nothing but waste/residue byproduct/refuse and admittedly these by products have been sold by the appellants. As per the department the appellant has availed cenvat credit on various input & input services which were utilized for manufacture of dutiable final products viz. sugar & molasses as well as exempted product like bagasse, press mud, boiler ash and sludge and accordingly a show cause notice dated 4.4.2018 for the periods April, 2016 to June, 2017 was issued to the appellant demanding amount of Rs.8,82,775/- i.e. the amount equal to 6% of sale value of Press mud, Boiler Ash & sludge in terms of Rule 6(3) ibid alongwith interest and penalty. The Adjudicating Authority vide Order-in-Original dated 19.7.2019 confirmed the demand alongwith interest and penalty by relying upon the provision of Rule 6(1) ibid that was amended w.e.f. 1.3.2015

vide notification No.6/2015 CE9NT) dated 1.3.2015 and also the clarification, issued vide circular dated 25.4.2016, which according to him, is binding on the department. When the appeal was filed by the appellant, the same was rejected by the learned Commissioner (Appeals) vide impugned order dated 14.7.2020 in view of amendment to Rule 6 ibid vide notification dated 1.3.2015 (surpa) coupled with the clarification issued vide circular dated 25.4.2016 (supra).

4. I have heard learned counsel for the appellant and learned authorised representative for the revenue and perused the case records including the written submissions and case laws placed on record by learned counsel. An identical issue had arisen in the matter of *Purna Sahakari Sakhar Karkhana Ltd. vs. Commr. CGST& CE, Aurangabad; 2022(12)TMI 6- CESTAT Mumbai* in which this Tribunal allowed the appeal filed by the assessee therein. The relevant paragraphs of the said decision are reproduced as under:-

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4. The appellants are manufacturer of sugar and molasses and during the process of manufacturing sugar & molasses by-products bagasse, press mud, boiler ash were generated which, as per the appellants, are nothing but waste/residue/refuse. It is admitted fact that the appellant sold the aforesaid by-products/waste in the market. Accordingly for the periods December, 2015 to June, 2017 department issued three show cause notices dated 5.1.2018 & 8.1.2018

respectively demanding amount equal to 5% or 6% of sale value of Press mud & Boiler Ash for violation of the provisions of Rules 6(2) & 6(3) ibid along with interest and penalty. The Adjudicating Authority vide separate Orders-in-Original dated 09.05.2019 confirmed the demand along with interest and penalty which was upheld by the first appellate authority by way of impugned order.

5. According to learned Chartered Accountant bagasse/pressmud emerged as waste during the crushing of sugar cane and during the crushing of sugarcane no cenvatable inputs are used and that the bagasse is further burned into boiler and thereafter boiler ash emerges which is also a waste. He further submitted that after purification/filtration of sugarcane juice, the waste remained is Pressmud. Therefore whatever products are in issue, are nothing but waste only. To strengthen his submission, learned Chartered Accountant cited the decision of this Tribunal in Appellant's own case in the matter of Excise Appeal No. 88942 of 2018; M/s. Purana SSK Ltd. vs. CCE & ST, Nashik; Final Order No. A/85128/2020 dated 29.01.2020 in which the Tribunal on identical issue, allowed the appeal filed by the Appellant while relying upon the law laid down by the Hon'ble Supreme Court in the matter of Union of India vs. DSCL Sugar Ltd.; 2015(322) ELT 769 (SC). Per contra learned Authorised Representative submitted that the Appellants are availing Cenvat Credit on the common inputs/input services, which were used in manufacture of goods cleared on payment of duty as well as the goods which were exempted from duty i.e. press mud, bagasse and boiler ash and cleared the exempted goods without payment of duty. He further submitted that pressmud, bagasse and boiler ash are capable of being sold and

appeared to be excisable goods and the tariff rate of duty for pressmud is NIL and therefore it is exempted from whole of the Central Excise duty, but the appellants are not maintaining any separate account of inputs/ input services used for manufacture of both exempted and duty paid goods as provided in Rule 6(2) ibid nor paid an amount equal to 6% of the value as provided under Rule 6(3) ibid as amended vide notification dated 1.3.2015 as in view of the amendment in Rule 6 w.e.f. 1.3.2015 provisions of Rule 6 of Cenvat Credit Rules, 2004 are attracted for the clearance of Bagasse for a consideration even though they are non-excisable.

6. I have heard learned Chartered Accountant appearing for the appellants and learned Authorised Representative appearing for the Revenue and perused the case records including the case laws submitted by the learned chartered accountant. The Hon'ble Supreme Court in the matter of DSCL Sugar Ltd. (supra) while considering the amended definition of excisable goods and manufacture has laid down that that pressmud is agricultural waste of sugarcane and the waste & residue of agricultural products during the process of manufacture of goods cannot be said to be result of any process. There is no manufacturing process involved in pressmud's production. "Bagasse, pressmud and boiler ash" are not 'goods' but merely a waste or by-product therefore Rule 6 of the Cenvat Rules shall have no application in the such cases as they are bound to come into existence during the crushing of the sugarcane and are an unavoidable agricultural waste.

7. The amendment dated 01.03.2015 in Rule 6 ibid has been wrongly relied upon by the authorities below in confirming the demand. As per Rule 6 ibid as amended, non-excisable goods which are manufactured

by the manufacturer in his factory will get covered under it and pressmud/ bagasse/boiler ash will not be covered under the said Rule despite being non-excisable goods since it emerges as agricultural waste or residue and are not manufactured goods. Rule 6 was amended in order to include the inputs used in relation to the manufacture of exempted goods. As such it can be seen that the same relates to the manufacture and it can safely be concluded that there has to be a manufacturing activity before invoking the aforesaid Rule. The Hon'ble Supreme Court in the matter of DSCL Sugar Ltd.(supra) has laid down that bagasse being an agricultural waste or residue, there could be no manufacturing activity. The aforesaid decision squarely applies on the facts of the instant appeals and apart from bagasse, since pressmud and boiler ash are also emerged as waste, the same also cannot be held to be excisable.

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9. In all the decisions of the Tribunal which has been cited by the learned counsel, a consistent view has been taken that 'bagasse, pressmud or boiler ash' which emerges as a waste/by-product, falls outside the scope of Rule 6 ibid. The amendment in Rule 6 might have the effect of treating the by-product to be exempted goods but it cannot result in treating them being manufactured goods, as the nature of bagasse or pressmud or boiler ash remains that of a waste/residue and is not in effect 'a final product'. In the matter of Gujarat Mineral Development Corporation Ltd. vs. CCE&ST, Vadodara-II; 2022(58) GSTL 49 (Tri-Ahmd) it has been held that once it is established that the product in question are by-product then it is settled that in respect of by-product demand under Rule 6 will not sustain. In the matter of Appeal No. E/86537/2018;

M/s. Shivratna Udyog Ltd. vs. Commr, CGST & CX, Pune-II, vide Order No. A/87964/2018 dated 20.11.2018 this Tribunal has gone to the extent of holding that no duty can be demanded even on the electricity generated through waste product. The relevant paragraph of the said decision is as under:-

"6. In due obedience to the judicial precedent emerged from the decision of Jakarya Sugars Ltd. post amendment period it can be said that the duty demand made against such sale of surplus electricity manufactured through waste product is not sustainable in law."

10. Provisions of Rule 6(3) ibid are applicable only when a manufacturer is engaged in the manufacture of any final product which is chargeable to duty as well as any other final product which is exempted from whole of duty or chargeable Nil rate of duty using Cenvat inputs. But here the manufacturer i.e. appellant here is not manufacturing bagasse or pressmud or boiler ash. These are by-products only and merely emerge as waste or residue while manufacturing sugar and molasses from sugar cane. None of the by-products falls within the definition of manufacture and in its absence nothing can be demanded from the appellant. It is not the case anywhere that after the amendment on 1.3.2015 by-products/ waste/residue have been included in the definition of 'manufacture' and therefore in my view the provisions of amended Rule 6(3) or Rule 6(2) ibid has no application and resultantly the demand raised by the revenue cannot sustain."

5. In view of the above, the issue involved herein is no more *res integra* and has been settled in favour of the assessee. Now I will deal with the circular dated 25.4.2016

(supra), which has been heavily relied upon by the authorities below in confirming the demand against the appellant. According to learned counsel the said circular has been treated as *non est* by subsequent circular dated 7.7.2022 a copy of which has also been placed on record. I have gone through the same and it is clear that the said circular i.e. circular dated 25.4.2016 has been rescinded by another circular being No.1084/05/2022-CX, dated 7.7.2022 issued by Central Board of Indirect Tax & Customs (CBIC) in view of the decision of the Hon'ble Supreme Court in the matter of *Union of India vs. M/s. Indian Sucrose Limited vide order dated 4.3.2022 in S.L.P. (C) No. 1700 of 2021* by which the Hon'ble Supreme Court dismissed the Special Leave Petition filed by Union of India. The relevant portion of the said order of Hon'ble Supreme Court is reproduced hereunder:-

"Heard the learned counsel for the parties.

In view of the judgment of this Court in Union of India vs. M/s. DSCL Sugar Ltd. & Ors. reported in 2015 (322) ELT 769 holding Bagasse to be non-excisable to which the Cenvat Credit Rules had no application, the circular dated 25.04.2016 is unsustainable in law.

The special leave petition is, therefore, dismissed."

6. Therefore following the law laid down by the Hon'ble Supreme Court in the matter of *M/s DSCL Sugar Ltd. (supra)* and the decision of this Tribunal in the matter of *Purna Sahakari Sakhar Karkhana Ltd. (supra)* coupled with the fact that the circular dated 25.4.2016 (supra) has already been rescinded, I

am of the view that pressmud, bagasse, boiler ash and sludge which emerged as waste or byproduct, fall outside the purview of Rule 6 ibid. Accordingly the impugned order is set aside and the Appeal filed by the Appellant is allowed with consequential relief, if any.

(Pronounced in open Court on 11.07.2023)

(Ajay Sharma)
Member (Judicial)

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