CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

EXCISE MISCELLANEOUS APPLICATION No. 86914 of 2025
in
EXCISE APPEAL No. 87477 of 2017

[Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-60-2017-18 dated 02.06.2017 passed by the Commissioner of Service Tax (Appeals), Pune.]

Shri Sant Damaji Sahakari Sakhar Karkhana Ltd. **.... Appellants**
Mangalwedha, District Solapur.
Maharashtra State – 413 305.

VERSUS

Commissioner of CGST & Central Excise **.... Respondent**
Pune-II CGST & Central Excise Commissionerate
GST Bhawan, 41/A Sassoon Road
Opp Ness Wadia College,
Pune – 411 001.

WITH

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APPEARANCE:

Shri Deepak V. Marne, Cost Accountant for the Appellants

Shri Xavier Mascarenhas, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON’BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86972/2025

Date of Hearing: 31.10.2025

Date of Decision: 31.10.2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Shri Sant Damaji Sahakari Sakhar Karkhana Limited, Solapur (herein after referred together as 'the appellants' for short) assailing the Order-in-Appeal No. PUN-SVTAX-000-APP-60-2017-18 dated 02.06.2017 (referred to, as 'the impugned order') passed by the Commissioner of Service Tax (Appeals), Pune.

2. The appellants haves filed this miscellaneous application seeking for change of name and address of the respondent arising on account of change in territorial jurisdiction of the Central Excise authorities after introduction of GST regime vide Notification No.13/2017-C.E. (N.T) dated 09.06.2017 and as the appellants-assessee presently comes under the territorial jurisdiction of Pune-II CGST & Central Excise Commissionerate. As the revised name and address of the respondent Commissionerate correctly reflect the revised jurisdictional departmental authorities, under whose jurisdiction the appellants-assessee is functioning for the purpose of indirect taxes viz., Central Excise/GST, the miscellaneous application filed by the appellants is allowed. The prayer made by the appellants is considered and the revised name and address of the respondent is duly incorporated for the purpose of disposal of this appeal. Registry is directed to incorporate the following changed name and address of the respondent in the appeal records for the purpose office records.

> *"Commissioner, Central Goods and Services Tax (CGST) & Central Excise,*
> *Pune-II Commissionerate,*
> *GST Bhavan, Sassoon Road, Opp. Wadia College*
> *Pune – 411 001.".*

3. Briefly stated, the facts of the case are that the appellants herein are engaged in the manufacture of excisable goods viz., sugar and molasses, denatured/rectified spirit falling under Chapter 17 and 22 of the First schedule to the Central Excise Tariff Act, 1985. During the course of manufacture of excisable goods, 'Bagasse' emerges as a by-product, which is chargeable to NIL rate of Central Excise duty. Since, the appellants had availed the CENVAT Credit on inputs used in manufacture of such bagasse which is a exempted product, in terms of Rule 6(3)(i) of CENVAT Credit Rules, 2004, show cause proceedings were initiated by the department for demand of 6% of the value of clearances of bagasse removed from the factory during the period October, 2015 to December, 2015, by treating it as exempted goods and for its recovery along with interest under Rule 14 of CENVAT Credit Rules, 2004 read with section 11A of the Central Excise

Act, 1944 and for imposition of penalty on the appellants under Rule 15 of the Rules, 2004. The Show Cause Notice (SCN) dated 24.10.2016 issued in this regard was adjudicated vide Order-in-Original dated 05.01.2017 in confirmation of the duty demand of Rs.13,68,732/- along with interest and for its recovery under Rule 14 of CENVAT Credit Rules, 2004 read with section 11A of the Central Excise Act, 1944 and imposed penalty of Rs. 1,36,873/- on the appellants under Rule 15(1) ibid. Being aggrieved with the said order of the original authority, the appellants have filed an appeal before the Commissioner (Appeals), who vide the impugned order dated 02.06.2017 has upheld the order of the original authority and dismissed the appeal filed by the appellants. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

4. Learned Cost Accountant for the appellant submits that whether Rule 6 of the Rules of 2004 is applicable to bagasse emerging as byproduct during the course of manufacture of sugar and molasses, has now been settled in their favour by various orders passed by the Tribunal in the case of *Athani Sugars Ltd. Vs. Commissioner of Central Excise* – 2017-TIOL-4280 CESTAT-MUM and also in other cases of *Shree Narmada Khand Udyog Vs. Commissioner of Central Excise* – 2018 (8) TMI 1075 CESTAT-AHMD; *Pannageshwar Sugar Mills Ltd. Vs. Commissioner of Central Excise* – 2018 (10) TMI 966-CESTAT MUM; *Shivratna Udyog Limited Vs. Commissioner of Customs & Central Excise* – Final Order No. A/895863-89568/17/SMB dated 04.08.2017 and *Bhaurao Chavan SSK Ltd. Vs. Commissioner of CGST & Central Excise, Aurangabad* - (2023) 10 Centax 37 (Tri.-Bom) . Therefore, he submitted that the impugned order is not legally sustainable and their appeal be allowed.

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

6. Heard both sides and perused the records.

7. We find that the issue of applicability of Rule 6(1) of CENVAT Credit Rules, 2004 to 'bagasse' 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.

8.1 In *Shree Narmada Khand Udyog* (supra), the 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."

8.2. Further, in the case of *Bhaurao Chavan SSK Ltd. (supra),* the Tribunal has held as follows:

6. …. 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 press mud 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 press mud's production. "Bagasse, press mud 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 1-3-2015 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 press mud/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 press mud and boiler ash are also emerged as waste, the same also cannot be held to be excisable.

** **

9. In all the decisions of the Tribunal which has been cited by the learned counsel, a consistent view has been taken that 'bagasse, press mud 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 press mud 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. v. 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. v. 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 v. 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 v. 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 25-4-2016 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 press mud, 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.

8.3 In this regard, we also find that the issue under dispute has also been examined by the Co-ordinate Bench of the Tribunal in the case of *Rajshree Sugars & Chemicals Ltd. Vs. Commissioner of Central Excise, Puducherry* - 2016 (343) E.L.T. 462 (Tri. - Chennai) in the context of clearance of non-excisable product. Relevant paragraph of the said order is quoted below:

"8.12 *It is seen from the above, that after re-structuring of Central Excise Tariff from 6 Digit to 8 Digit with effect from 1-3-2005, Rectified Spirit and ENA are exempted by Notification No. 3/2005-C.E. (supra) and the appellant discharged the obligations under Rule 6 of the Cenvat Credit Rules, 2004 in respect of clearance of Rectified Spirit and ENA and therefore, denial of exemption Notification No. 67/95-C.E. (supra) on Molasses captively consumed in Rectified Spirit and ENA cannot be sustained. Accordingly, denial of Cenvat credit on the Molasses purchased from other sugar mill used in the manufacture of Rectified Spirit and ENA are also liable to be set aside. We have also noted that inputs and input service are not exclusively used for generation of electricity and therefore, Cenvat credit cannot be denied."*

The department not satisfied with the above order, had filed an appeal against the said order in a batch of cases before the Hon'ble Supreme Court in Civil Appeal Nos. 8915 of 2015 along with 14628 of 2015; 13469 of 2015 and 9088 of 2018. The said appeals were dismissed by the Hon'ble Supreme Court by upholding the order of the Tribunal. The relevant extract of the said judgement dated 16.02.2022

> *"We do not find any merit in the present appeal, as the respondent/assessee has enjoyed the benefit of the exemption Notification No. 67/95-C.E., dated 16-3-1995 till financial year 2005-06. The appellant-Revenue has predicated their case on the addition of the item "other" in Heading No. 22.04 made vide sub-heading 2204.90 with effect from 1-3-2005. In our opinion the aforesaid addition is not a substantive change or modification. In fact, the Tribunal has pointed out and it is accepted that the changes were made pursuant to adoption and re-structuring of tariff from six digit to eight digit. The changes made were not with the intend to withdraw the existing benefits or to withdraw an exemption which had been given and had been enjoyed by the respondent/assessee for the last twenty years.*
>
> *Recording the aforesaid, the appeal stands dismissed."*

9. On the basis of the above decisions of the Tribunal and the judgement delivered by the Hon'ble Supreme Court, we do not find any merits in the impugned order, insofar as it has upheld the order of original authority in confirmation of the adjudged demands and its recovery along with imposition of penalty on the appellants. Accordingly, we are of the considered view that the impugned order is liable to be set aside as the same does not stand the legal scrutiny.

10. In the result, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Operative portion of the order pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM