CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH

EXCISE APPEAL NO: 87636 OF 2017

[Arising out of Order-in-Appeal No. PUN-CT-APPII-000-183 to 190-17-18 dated 04/09/2017 passed by the Commissioner of Central Tax (Appeals), Pune – II.]

Indreshwar Sugar Mills Ltd (Appeals) … ***Appellant***
Uplai (T), Tal: Barshi, Dist: Solapur - 413401

versus

Commissioner of Central Tax ***...Respondent***
Pune – II
ICE House, 41-A Sassoon Road, Pune – 411 001

WITH

EXCISE APPEAL NO: 87638 OF 2017

[Arising out of Order-in-Appeal No. PUN-CT-APPII-000-183 to 190-17-18 dated 04/09/2017 passed by the Commissioner of Central Tax (Appeals), Pune – II.]

Vithalrao Shinde Sahakari Sakhar Karkhana Ltd … ***Appellant***
Gangamainagar, Tal: Madha, Dist: Solapur - 413401

versus

Commissioner of Central Tax (Appeals) ***...Respondent***
Pune – II
ICE House, 41-A Sassoon Road, Pune – 411 001

WITH

EXCISE APPEAL NO: 87639 OF 2017

[Arising out of Order-in-Appeal No. PUN-CT-APPII-000-183 to 190-17-18 dated 04/09/2017 passed by the Commissioner of Central Tax (Appeals), Pune – II.]

Babanraoji Shinde Sugar & Allied Industries Ltd … ***Appellant***
Gat No.160, Madha-Vairag Road, Turk Pimpari
Malvandi, Tal: Barshi, Dist: Solapur - 413210

versus

Commissioner of Central Tax (Appeals) ***...Respondent***
Pune – II
ICE House, 41-A Sassoon Road, Pune – 411 001

WITH

EXCISE APPEAL NO: 87657 OF 2017

[Arising out of Order-in-Appeal No. PUN-CT-APPII-000-183 to 190-17-18 dated 04/09/2017 passed by the Commissioner of Central Tax (Appeals), Pune – II.]

Utopian Sugars Ltd … ***Appellant***
S No.386/2, Kacharewadi, Post & Tal: Mangalwedha
Dist: Solapur - 413210

versus

Commissioner of Central Tax (Appeals) ***…Respondent***
Pune – II
ICE House, 41-A Sassoon Road, Pune – 411 001

WITH

EXCISE APPEAL NO: 87659 OF 2017

[Arising out of Order-in-Appeal No. PUN-CT-APPII-000-183 to 190-17-18 dated 04/09/2017 passed by the Commissioner of Central Tax (Appeals), Pune – II.]

Siddhanath Sugar Mills Ltd … ***Appellant***
At Post: Tirhe, Tal: North Solapur
Dist: Solapur - 413210

versus

Commissioner of Central Tax (Appeals) ***…Respondent***
Pune – II
ICE House, 41-A Sassoon Road, Pune – 411 001

WITH

EXCISE APPEAL NO: 87660 OF 2017

[Arising out of Order-in-Appeal No. PUN-CT-APPII-000-183 to 190-17-18 dated 04/09/2017 passed by the Commissioner of Central Tax (Appeals), Pune – II.]

Bhairavnath Sugar Works Ltd … ***Appellant***
S.No. 148, Vihar, Tal: Karmala
Dist: Solapur

versus

Commissioner of Central Tax (Appeals) ***…Respondent***
Pune – II
ICE House, 41-A Sassoon Road, Pune – 411 001

WITH

EXCISE APPEAL NO: 87675 OF 2017

[Arising out of Order-in-Appeal No: PUN-CT-APPII-000-183 to 190-17-18 dated 04/09/2017 passed by the Commissioner of Central Tax (Appeals), Pune – II.]

Lokmangal Agro Industries Ltd ... ***Appellant***
Subhash Nagar, A/p Bibi Darfal, Tal: North Solapur
Dist: Solapur - 413222

versus

Commissioner of Central Tax (Appeals) ***...Respondent***
Pune – II
ICE House, 41-A Sassoon Road, Pune – 411 001

AND

EXCISE APPEAL NO: 87719 OF 2017

[Arising out of Order-in-Appeal No: PUN-CT-APPII-000-183 to 190-17-18 dated 04/09/2017 passed by the Commissioner of Central Tax (Appeals), Pune – II.]

Vitthal Corporation Ltd ... ***Appellant***
Vitthal Shinde Nagar, Post: Mhaisgaon, Tal: Madha
Dist: Solapur - 413250

versus

Commissioner of Central Tax (Appeals) ***...Respondent***
Pune – II
ICE House, 41-A Sassoon Road, Pune – 411 001

APPEARANCE:

Shri Kiran Chavan and Shri Sachin Chitnis, Advocates for the appellants

Shri Rajiv Ranjan, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85909-85916/2026

DATE OF HEARING: 16/07/2026
DATE OF DECISION: 16/07/2026

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. The issue involved in all these appeals is identical and accordingly, the same are taken up for hearing together, and a common order is being passed.

3. Brief facts of the case are that the appellants are engaged *inter alia,* in the manufacture and clearance of sugar and molasses, falling under Chapter 17 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants avail CENVAT credit of Central Excise duty paid on the inputs/capital goods and service tax paid on the input services. During the course of manufacture of sugar, molasses and bagasse emerged as by-product. The appellants use molasses captively within the factory and during the course of captive consumption of the said goods, electricity generated within the factory, which appellants used for their manufacturing purpose and also sold the remaining surplus electricity to M/s Maharashtra State Electricity Distribution Company Ltd (MSEDCL). It is the contention of the department that since generation of electricity and wheeling out of the same to MSEDCL is exempted from payment of central excise duty, the appellants were required to observe the procedure laid down under sub-rule (3) of Rule 6 of CENVAT Credit Rules, 2004 and appellants were liable to pay an amount equal to 6% of the value of the exempted electricity sold to MSEDCL. On the basis of such understanding, show cause proceedings were initiated against the appellants, which culminated in to the adjudication orders, wherein the proposals made against the appellants were confirmed. On appeal against these adjudication orders, the learned Commissioner (Appeals) *vide* the impugned order dated 04.09.2017 has upheld confirmation of the adjudged demands and rejected the appeals filed by the appellants. Being aggrieved with the impugned order dated 04.09.2017, the appellants have

preferred these appeals before the Tribunal.

4. The issue as to whether, sale of electricity to outside parties would be considered as sale of exempted goods for the purpose of payment of an amount @ 6% on the value of such goods, is the subject matter of the present dispute. We find that the issue arising out of present dispute is no more *res integra,* in view of the Final Order No. A/85296-85307/2026 dated 17/02/2026 passed by this Bench of the Tribunal, in the case of *M/s Olam Agro India Pvt Ltd & others v. Commissioner of CGST & Central Excise, Pune – I*. The relevant paragraphs recorded in the said order are extracted herein below:

> *"3. Brief facts of the case are that the appellants are engaged inter alia, in the manufacture of Sugar, Molasses and Ethyl Alcohol, falling under Chapter 17 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants avail CENVAT Credit of Central Excise duty paid on the inputs and service tax paid on the input services, which are used for payment of central excise duty on clearance of the said final products from the factory. Apart from manufacturing the said final products, the appellants are also engaged in generation of electricity, which are classifiable as 'Electrical Energy' under Tariff Item No. 2716 0000 of Central Excise Tariff Act, 1985. The electricity, so generated by the appellants, are used captively for manufacture of the said excisable goods within the factory and excess/ surplus quantity of generated electricity was sold out to the Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) without payment of Central Excise duty, inasmuch as no duty rate for electricity has been prescribed in the Tariff Act of 1985. Since the appellants are engaged in the manufacture of excisable goods and sold electricity to outside parties, which are non-dutiable, the Department had interpreted that CENVAT credit on common inputs and input services cannot be taken for both type of activities undertaken by them. Since the appellant did not maintain any separate records, bifurcating usage of inputs and input services for manufacture of excisable goods and for generation of electricity, the Department had interpreted that provisions of Rule 6(3) of the CENVAT Credit Rules, 2004 should be applicable and thus, the appellants are liable to pay 6% of the value of electricity sold to the outside parties. The show-cause notices issued in this regard were adjudicated by the original authorities vide various Orders-in-Original,*

wherein the proposals made in the SCNs were confirmed. On appeal against those adjudication orders, the learned Commissioner (Appeals) vide the impugned order dated 03.08.2017 has upheld confirmation of the adjudged demands and rejected the appeals filed by the appellants. Feeling aggrieved with the impugned order dated 03.08.2017, the appellants have preferred these appeals before the Tribunal.

4. We find that an identical dispute in the case of M/s Vaidyanath SSK Ltd. and others came up for hearing before the Commissioner of GST, Aurangabad and vide Order-in-Original No. 25-44/CEX/COMMR/MKR/ 2021-22 dated 17.11.2021, the matter was adjudicated in favour of the assessees, by dropping the show-case proceedings initiated against them. In the said adjudication order dated 17.11.2021, the learned Commissioner by relying upon the judgement delivered by the Hon'ble Supreme Court, in the case of Union of India Vs. DSCL Sugar Ltd. – 2015 (322) E.L.T. 769 (S.C.), judgement of Hon'ble Allahabad High Court in the case of Balrampur Chini Mills Ltd. Vs. Union of India - 2019 (368) E.L.T. 276 (All.) and Hon'ble Delhi High Court in the case of Commissioner of Central Excise and S. Tax LTU, Delhi Vs. Nangalamal Sugar Complex – 2020 (371) E.L.T. 501 (Del.), had held that electricity produced from bagasse by the assesses and sold to MSEDCL cannot be subjected to payment of amount equal to 6% of the value of electricity sold by them under Rule 6(3) of the CENVAT Credit Rules, 2004. The period of dispute involved in the said decided case by the Commissioner was from February 2015 to June 2017. In the present appeals, the period of dispute involved is from March 2015 to December 2015. There is no change in the statutory provisions during the period, for which the Order dated 17.11.2021 (supra) was passed by the Commissioner of GST, Aurangabad vis-à-vis the present impugned order passed by the learned Commissioner (Appeals). Thus, the issue arising out of the present dispute regarding payment of amount of 6% in terms of Rule 6(3) of the Rules of 2004, shall not be applicable in case of generation of electricity and wheeling out the same to M/s MSEDCL. We find that the order dated 17.11.2021 passed by the Commissioner of GST, Aurangabad (supra) has been accepted by the Committee of Chief Commissioners in their meeting held on 11.02.2022. Since, no appeal was preferred against the said order dated 17.11.2021, the matter arising out of the present dispute regarding payment of amount under Rule 6 (3) ibid has attained finality and cannot be agitated further. In view of the fact that the issue arising out of the present dispute, is no more open for any debate, in view of the adjudication order dated

> *17.11.2021 passed in the case of M/s Vaidyanath SSK Ltd. & others, we are of the view that different interpretation cannot be placed at this juncture, for deciding the present appeals differently.*
>
> *5. Therefore, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands on the appellants. Accordingly, the impugned order is set aside and the appeals are allowed in favour of the appellants."*

5. In view of the foregoing discussions, we find that the issue arising out of the present dispute is no more open for any debate, for a decision contrary to the decided case referred *supra*. Therefore, the impugned orders are set aside and the appeals are allowed in favour of the appellants.

(Dictated and Pronounced in Open Court)

(S.K. MOHANTY)
Member (Judicial)

(M.M. PARTHIBAN)
Member (Technical)

**/as*