CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH

EXCISE APPEAL NO: 85302 OF 2018

[Arising out of Order-in-Appeal No: PUN-CT-APPII-000-270-17-18 dated 14/11/2017 passed by the Commissioner of Central Tax (Appeals), Pune – II.]

Lokmangal Sugar Ethenol & Co-Gen Industries Ltd ... ***Appellant***
Bhandarkavathe, Tal: South Solapur
Dist: Solapur - 413221

versus

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

<u>APPEARANCE</u>:

Shri Kiran Chavan, Advocate for the appellant

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: 85942/2026

DATE OF HEARING: 21.07.2026
DATE OF DECISION: 21.07.2026

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. Brief facts of the case are that the appellant is engaged *inter alia,* in the manufacture of sugar and molasses, falling under Chapter 17 of the First Schedule to the Central Excise Tariff Act,

1985. The appellant avails CENVAT credit of Central Excise duty paid on the inputs and service tax paid on the input services. During the course of manufacture of the said final products, electricity is generated in the factory, which the appellant use in the captive production of final product and also sell the surplus generated electricity to Maharashtra State Electricity Distribution Company Ltd (MSEDCL). Electrical energy is also classifiable as an excisable commodity under Tariff item 2716 0000 of the Central Excise Tariff Act, 1985 without mentioning any rate of duty. Since the appellant did not pay any Central Excise duty on electricity sold to M/s MSEDCL, the Department had interpreted that electricity being an exempted goods, the appellant is required to follow the procedures laid down under Rule 6 of the CENVAT Credit Rules, 2004. Since the appellant did not maintain separate records with regard to sale of their dutiable final products and selling of electricity to M/s MSEDCL, the Department was of the view that the appellant was required to pay 6% of the amount of electricity sold to M/s MSEDCL. On the basis of such interpretation, show cause proceedings were initiated by the Department, which culminated into the adjudication order dated 31.03.2017, wherein the original authority had confirmed the demand of ₹1,26,74,248/- along with interest and also imposed penalties on the appellant. On appeal against the said adjudication order dated 31.03.2017, the learned Commissioner (Appeals) *vide* impugned order dated 14.11.2017, has upheld confirmation of the adjudged demands and rejected the appeal filed by the appellant. Feeling aggrieved by the impugned order dated 14.11.2017, the appellant has preferred this appeal before the Tribunal.

3. We find that the issue arising out of the present dispute, whether the appellant is required to pay an amount of 6% of the value of generated electricity sold to MSEDCL, 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 Private Ltd. and others vs. Commissioner of*

CGST and Central Excise, *Pune – I.* The relevant paragraph recorded in the said order is quoted herein below.

> *"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."*

4. 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 order dated 17.02.2026 passed by the Tribunal in the case *M/s Olam Agro India Private Ltd.* (*supra),* we are of the considered opinion that the impugned order passed, in confirming the adjudged demands on the appellant cannot be sustained. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Dictated and Pronounced in Open Court)

(S.K. MOHANTY)
Member (Judicial)

(M.M. PARTHIBAN)
Member (Technical)

**/as*