

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. I

Excise Appeal Nos. 40479 to 40482 of 2015

(Arising out of Order-in-Original No. 01-04/2014 dated 28.11.2014 passed by Commissioner of Central Excise, Madurai)

M/s. Sakthi Sugars Ltd.

Jothi Nagar,
Padamathur,
Sivagangai – 630 561.

...Appellant

Versus

Commissioner of GST and Central Excise

Madurai Commissionerate,
Central Revenue Building,
No. 4, Lal Bahadur Shastri Road,
Madurai – 625 002.

...Respondent

APPEARANCE:

For the Appellant : Shri M.N. Bharathi, Advocate

For the Respondent : Smt. O.M. Reena, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 40004-40007 / 2025

DATE OF HEARING : 10.12.2024

DATE OF DECISION : 02.01.2025

Order :- Per Mr. VASA SESHAGIRI RAO

These four Excise Appeals No. E/40479-40782/2015 have been filed by M/s. Shakthi Sugars Ltd., Sivagangai (hereinafter referred to as Appellant) being aggrieved by the impugned Orders-in-Original Nos. 01-04/2014 dated 28.11.2014 passed by the Commissioner of Central Excise, Madurai confirming the demands of Rs.1,06,34,961/-, Rs.35,02,546/-, Rs.26,58,837/-and Rs.18,55,058/- under Rule 14 of Cenvat Credit Rules, 2004(CCR) read with Section 11A(1) of Central Excise Act, 1944 (ACT),

along with applicable interest and imposing penalty equal to the demands confirmed, under Rule 15(1) of CCR, 2004.

2. Facts briefly stated are that, the Appellant was engaged in the manufacture of Sugar and Molasses and during such process, Bagasse emerged as a bye product at the milling stage which was captively consumed in the co-generation plant for generating electricity which was in turn captively consumed in the sugar plant and also supplied to the grid of the Tamil Nadu Electricity Board (TNEB). Bagasse, being marketable was also sold to some customers. The Appellant was availing Cenvat credit of duty paid on inputs like lubricating oil, hydrochloric acid and other chemicals and also on inputs services, which were utilised towards payment of duty on Sugar and Molasses. It appeared to the department that the Bagasse, specified under Tariff Head 2203 2000 of Central Excise Tariff Act, 1985 (CETA) and chargeable to Nil rate of duty, falls within the scope of definition of exempted goods in terms of Rule 2(d) of CCR. As the Appellant had availed and utilised Cenvat credit without maintenance of separate accounts for manufacture of dutiable and exempted goods as per Rule 6(2) of CCR and had not paid an amount mandated under Rule 6(3)(i) / 6(3)(ii) of CCR, it appeared that the Appellant had contravened the provisions of Rule 6 of CCR. Therefore, the Show Cause Notices dated 13.12.2011, 28.03.2012, 09.05.2012 and 06.02.2013 were issued to the Appellant, seeking to recover Cenvat Credit of Rs.18,55,058/-, Rs.35,02,546/-, Rs.26,58,837/- and Rs.1,06,34,961/- respectively, under Rule 14 of CCR read with Section 11(A) (1) of the ACT along with applicable interest, besides proposing to impose penalty under Rule 15(1) of CCR read with Section 11AC of the ACT.

The Adjudicating Authority have confirmed the demands proposed in the said SCN's and imposed equal penalty under Rule 15(1) of CCR.

3. The Appellant's contentions as culled out from the Grounds of Appeal are that: -

- i. the issue was no more *res integra* in view of the Hon'ble High Court of Allahabad's decision in the case of *M/s. Balrampur Chini Mills Ltd. Vs Union of India [2014 (300) ELT 372 (All.)]* whereby the CBEC Circular No. 904/24/2009-CX dated 28.10.2009 and Circular dated 03.10.2009 were held to be invalid and quashed.
- ii. Bagasse emerged only as a waste/ intermediary/ bye -product during crushing of sugarcane during the manufacturing process and though marketable, duty could not be imposed on it as there was no manufacturing activity involved and therefore Rules 6(1), 6(2) and 6(3) of CCR were not applicable.
- iii. It was submitted that it is a settled law that Bagasse generated from the crushing of sugarcane is not a manufactured final product but is only a residue / waste relying on the decision of the Apex Court in the case of *CCE Vs. Shakumbari Sugar and Allied Industries Limited [2005 (189) ELT (SC)]* wherein it was held that Bagasse generated during the course of manufacture of sugar does not become a final product although the product is mentioned as an entry in the Schedule to CETA and therefore cannot be regarded as a final product, or an exempted product.
- iv. Reliance was also placed on the decision in the case of *Shri Siddeshwar SSK Ltd Vs. Commissioner of Central Excise, Pune III [2014 (309) ELT 495]* wherein it was held that waste products arising

during the manufacture of Sugar such as Bagasse and compost products could not be considered as final products and therefore, payment of sum equal to 5% / 10% of the price of the goods was not required in terms of Rule 6(3) of CCR. Further reliance was also placed on the decisions in the case of *CCE, Lucknow Vs DSCL Sugar [2014 (304) ELT33-ALL]* and *CCE, Trichy Vs. Tamilnadu Newsprint and Papers Limited [2014 (309) ELT 279]*.

- v. It was submitted that the definition of Rule 2(d) of CCR would be applicable only to the exempted or final goods manufactured and hence not applicable to Bagasse which is not manufactured or produced from inputs/ input services in terms of definition of Rule 2(b) of CCR.
- vi. It was averred that there was no Cenvat credit availed on account of fraud, suppression of facts, contraventions of provisions of the act, etc. and hence imposition of penalty under Rule 15 of CCR was unjustified and not sustainable placing reliance on the decisions rendered in following judicial decisions: -

(a) Maruti Udyog Ltd. Vs CCE, Noida- [2009 (238) ELT 180 (Tri.-Del.)] which was affirmed by Hon'ble Supreme Court.

(b) CCE Vs. Grasim Industries Ltd. [2005 (183) ELT 123]

(c) CCE Vs. Gujarat Narmada fertilisers Co. Ltd. [2009 (240) ELT 661 (SC)]

(d) Parryware Roca (P) Ltd Vs. CCE, Salem [2010-TIOL-1594-CESTAT-Mad]

(e) India cements Ltd. Vs. CCE, Salem [2011-TIOL-185-CESTAT-Mad]

(f) Saint Gobain Glass India Ltd. Vs. CC(Air), Chennai [2011-TIOL-722-CESTAT-Mad]

(g) MRK Coop Sugar Mills Ltd. Vs. CCE, Pondicherry [2014 (307) ELT 228]

- 4. The Ld. Counsel for the Appellant Shri M.N. Bharathi has reiterated the contentions as specified in the Grounds of Appeal and further

submitted that in similar circumstances, CESTAT Chennai has set aside the demand in the case of *Ponni Sugars (Erode) Limited Vs. Commissioner of Central Excise, Salem in Final Order No. 40391/2023 dated 18.10.2023 [2023 (10) TMI 876 (Tri.-Chennai)]* and sought for setting aside the impugned order dated 28.11.2014.

5. The Ld. Authorised Representative Smt. O.M. Reena, Additional Commissioner representing the Department affirmed the findings of the Original Adjudicating Authority and submitted that the Appellant was liable to reverse the Cenvat credit in terms of Rule 6(3) of CCR as Bagasse, being excisable but charged to 'nil' rate of duty was also an exempted product arising during the course of manufacture of Sugar. It was pointed out that the Appellant had contravened the provisions of CCR with an intent to evade duty payment and hence the demand confirmed/ penalty imposed are justified. She has placed reliance on the Explanation 1 to Rule 6 of CENVAT Credit Rules, which reads as follow: -

"Explanation 1. – 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."

6. We have carefully considered the submissions made by both the sides and also evidences available on records.

7. The only issue that is required to be decided in these appeals is:-

- i. Whether the Appellant is liable to pay an amount equivalent to 5% / 6% on the value of Bagasse clearances in terms of Rule 6(3) of CENVAT Credit Rules, 2004?

8. We find that the Appellant engaged in the manufacture of sugar and molasses were availing credit on inputs/ inputs services and during the manufacture, Bagasse, a Bye product is produced which in turn is used in the generation of electricity, a non-dutiable product which is both captively consumed for Sugar manufacturing and also supplied to the grid of the TNEB. Besides, the Bagasse produced is cleared to some Customers for generation of power. The Department issued these four Show Cause Notices for the period between November 2010 to November 2012 seeking to recover the Cenvat credit availed and utilised in the manufacture of dutiable and exempted products as the Appellant had not maintained separate records thus contravening the provisions of Rule 6 of CCR. The Appellant have denied the allegations of the department and maintained that Bagasse was only an intermediary or waste emerging during the course of manufacture and not a final product and that the issue was already settled in favour of the Assessee relying on numerous decisions of the judicial fora.

9. We find that the identical issues as involved in the present case, was also involved in the case of M/s. Ponni Sugars (Erode) Limited cited *supra* wherein Chennai Bench of this Tribunal has allowed the appeal by setting aside the demands of Cenvat credit. It is pertinent to reproduce the relevant findings of the Tribunal in the above cited case, herein below:

"10. The Explanation 1 to Rule 6 of the CENVAT Credit Rules, which was inserted with effect from 01.03.2015, reads as under:-

"Explanation 1. - 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."

11. In terms of the above Explanation which was introduced with effect from 01.03.2015, the appellant has to reverse the credit or pay 6% of the value of the

exempted products in case non-excisable goods are cleared for a consideration. The Board had also issued a Circular in line with the above Explanation. However, the said Circular came to be challenged before the Hon'ble High Court of Allahabad in the case of Balrampur Chini Mills Ltd. (supra) and the same was held to be invalid and quashed. The relevant portion of the said decision of the Hon'ble Allahabad High Court reads as under: -

“27. After the aforesaid judgment which has clearly held Bagasse not to be a manufactured product, and therefore Rule 6 of the Cenvat Credit Rules, 2004 shall have no application, Section 6(1) has been amended by inserting the 2 Explanations, which the respondent contends is sufficient to include Bagasse within the fold of Section 6, and further to justify the stand for a reversal of Cenvat Credit Rules, 2004.

28. A perusal of the Explanation 1 to Rule 6 would indicate that it provides that the exempted goods and final product as defined in Clauses (d) & (h) of Rule 2 shall include non-excisable goods cleared for a consideration from the factory.

29. Explanation 1, talks about the inclusion of non-excisable goods cleared for consideration from the factory within the category of exempted goods or final products while the Circular dated 25-4-2016 proceeds on the basis that Bagasse is a non-excisable goods and is now to be treated like exempted goods for the purpose of a reversal of input and Input service.

30. As noted by the Hon'ble Supreme Court in the case of Union of India and Others v. M/s. DSCL Sugar Ltd. and Others (supra) specifically in the context of Bagasse, Rule 6 applies only when there is a manufacture of final products or of exempted products, and if there is no manufacture, Rule 6 of the Cenvat Credit Rules, 2004, has no application.

31. This amendment may have the effect of treating Bagasse to be an exempted goods, but cannot result in Bagasse being manufactured goods, as the nature of Bagasse remains that of an agricultural waste and residue and is not in effect a product. This aspect and character of Bagasse remains unaltered by insertion of Explanation 1.

32. In absence of Bagasse being a manufactured final product, the obligation of a reversal of Cenvat period under Rule 6(1) of the Cenvat Credit Rules, 2004 is not attracted. It has also been noticed that Bagasse has always been an “exempted goods” under Rule 2(d) of the Cenvat Credit Rules, 2004. It has been mentioned in Central Excise Tariff Heading 2303 20 000 and was subjected to NIL rate of duty. It therefore, fell within the definition of “exempted goods” as defined under Rule 2(d) and is not a non-excisable goods, as mentioned in the impugned circular.

33. That the Circular dated 25-4-2016 interpreting Explanation 1 to Rule 6 has provided that “consequently, Bagasse, dross and skimmings of non-ferrous metal or any such by-product of waste, which are non-excisable goods and are cleared for consideration from the factory need to be treated like exempted goods for purpose of reversal of credit of input and input services, in terms of Rule 6 of the Cenvat Credit Rules, 2004. The circular therefore treating Bagasse to be a non-excisable goods, is clearly erroneous, and for this reason also the Circular dated 25-4-2016 is liable to be quashed with regard to Bagasse.

34. In light of the above we are of the considered opinion that in absence of Bagasse being a manufactured final product, the obligation of reversal of Cenvat Credit under Rule (1) of the Cenvat Credit Rules, 2004 is not attracted, and the

ratio laid down in the judgment of the Hon'ble Supreme Court in the case of Union of India and others v M/s. DSCL Sugar Ltd and Others (supra) still holds the field. Rule 6 of the Cenvat Credit Rules would have no application for reversal of Cenvat Credit in relation to Bagasse. The Circular No. 1027/15/2016-CX, dated 25-4-2016, contained in Annexure-1 to the writ petition to the extent that it includes Bagasse under the purview of the reversal of credit of input services in terms of Rule 6 of the Cenvat Credit Rules, 2004, as well as the impugned show cause notice dated 24-3-2017 contained in Annexure-2, are hereby quashed."

12. The Tribunal in a recent decision in the case of Khedut Sahakari Khand Udyog Mandli Ltd. (supra) has followed the above decision of the Hon'ble Allahabad High Court to set aside the demand."

10. After appreciating the facts and following the above decisions in the cases of *Commissioner Vs. Kicha Sugar Co. Ltd. dated 20.02.2004*, *Union of India Vs. DSCL Sugar Ltd. [2015 (322) ELT 769 (SC)]* and *M/s. Balrampur Chini Mills Ltd. Vs. Union of India [2014 (300) ELT 372 (All.)]*, we are of the considered opinion that the demands raised cannot sustain and requires to be set aside. And so, ordered accordingly. Since the demands themselves could not be sustained, the question of demand of interest and imposition of penalty does not arise.

11. In the result, the impugned Orders-in-Original Nos. 01-04/2014 dated 28.11.2014 is set aside. Thus, the appeals are allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 02.01.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)