
(2013) 09 AHC CK 0068
In the Allahabad High Court
Case No : C.E. Appeal No. 23 of 2013

Commissioner of Central Excise

APPELLANT

Vs

DSCL Sugar

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2014) 304 ELT 33

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Judgement

1. Admittedly, the controversy in question is no more res Integra. It has been settled by the Division Bench of this Court while deciding the Writ Petition No. 11791 (M/B) of 2010, 2014 (300) ELT 372 that bagasse is a waste product and no more duty will be imposed over it. Further, Bagasse and "press mud" are not final products of the manufacturer. Relevant portion of the order and operative portion of the judgment and order dated 18-5-2012 (supra) are reproduced as under:-

The law is well settled that "bagasse" generated from the crushing of the sugarcane is neither manufactured goods nor manufactured final product, but it is a residue/waste. The Apex Court while dismissing the Civil Appeal preferred by the department in the case of C.C.E. v. Shakumbhari Sugar & Allied Industries Limited (2005 (189) E.L.T. 62 (S.C.)), uphold the findings recorded by the Tribunal in the case of CCE v. Shakumbhari Sugar and Allied Industries Limited, whereby it has been held that the "Bagasse" obtained during the course of manufacture of sugar out of sugarcane may find an entry in Schedule to the Central Excise Tariff, but it does not become a final product merely on such entry. Such "bagasse" is nothing but a waste obtained during manufacture of sugar waste cannot be regarded as a final product exempt from duty for invoking provisions of Rule 57CC of Central Excise Rules, 1944.

The said finding has also been followed in the cases of Central Excise Commissioner v. Mahalakshmi Sugar Mills and Commissioner Central Excise,

Meerut v. U.P. State Sugar Corporation and held that the Bagasse and press mud are not final products of the manufacturer. Accordingly, recovery of 8% amount of the waste Bagasse and press mud cleared by the said sugar company was held to be not justified.

Thus, it is not in dispute that the bagasse is an agricultural waste of sugarcane, though marketable product, but the duty cannot be imposed as it does not involve any manufacturing activity simply by adding an explanation u/s 2(d) of the Central Excise Act, 1944, whereby the definition of "goods" has been defined will not make bagasse, which, as stated hereinabove, is an agricultural waste to be a dutiable item and the Chief Commissioner vide Circular dated 3-10-2009 nullified the judgment and order dated 21-7-2010 rendered in Civil Appeal No. 2791 of 2005.

Bagasse is classified under sub-heading 2303 20 00 of Central Excise Tariff Act. In view of the judgment of Apex Court in Civil Appeal No. 2791 of 2005. Commissioner of Central Excise v. Balrampur Chini Mills, Gonda, decided on 21-10-2010, the Circular of the Chief Commissioner, Central Excise, Lucknow as well as Circular of Central Board of Excise and Customs are liable to be quashed which is the basis for issuing the demand.

In the impugned notice dated 27-9-2010, it has been mentioned that as per Rule 6 of the CENVAT Credit is availed on the inputs which are used in the manufacture of both dutiable and final products, then an amount equal to 10% (up to 6th July, 2009) or 5% (w.e.f. 7-7-2009) of the sale value of exempted final products is required to be paid. Therefore, neither the penalty nor the interest can be charged from the petitioners, in view of the fact that the petitioners are not liable to duty either by payment or by reversal in respect of bagasse sold by the petitioner. As the petitioners have paid the entire duty and interest under protest, the entire deposited amount shall be returned to them.

In view of above discussion, all the writ petitions are allowed and impugned Circular dated 28-10-2009, issued by the Central Board of Excise and Customs, the Circular dated 3-10-2009 issued by the Central Excise, U.P., Lucknow and demand notice dated 24/27-9-2010 issued by the Joint Commissioner, Customs, Central Excise and Service Tax are hereby quashed. As some of the petitioners deposited the entire duty and interest under protest, it should be returned to them, within a maximum period of four weeks, from the date of presentation of a certified copy of this order.

2. Since the controversy in question has been settled at rest by the aforesaid judgment and order of this Court, there appears to be no reason to admit the present appeal and decide the issue afresh. The judgment and order passed by the Tribunal does not suffer from any impropriety or illegality. The instant appeal being devoid of merit is hereby dismissed.