(2021) 08 CESTAT CK 0102

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 721 Of 2012

M/s. Warana Ajara Sakhar Udyog APPELLANT

Vs

Commissioner Of Central Excise, Kolhapur RESPONDENT

Date of Decision : 20-08-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 6, 6(3)(i)
Central Excise Act, 1944 — Section 2(d), 2(f)

Citation : (2021) 08 CESTAT CK 0102

Hon'ble Judges : Dr. Suvendu Kumar Pati, J;Sanjiv Srivastava, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Taxability on pressmud, wastes generated during manufacturing of sugar/ molasses, and application of Rule 6(3)(i) of CENVAT Credit Rules, 2004 dealing with payment of 5% / 6% value of exempted goods is the issue before us in the appeal.

2. We have heard the submissions from both the sides, which needs no elaboration in view of withdrawal of circular/instruction on excisability of bagasses and similar other by-products or wastes arising during the course of manufacture of excisable product including the Circular No. 904/24/2009-CX dated 28.10.2009 basing on which Order-in-Original and Order-in-Appeal are passed. The operating portion of the said Circular No. 1027/15/2016-CX dated 25.04.2016 reads:-

2. The issue came before the Hon'ble Supreme Court in a case of M/s Union of India and Ors vs M/s DSCL Sugar Ltd [2015-TIOL-240-SC-CX] dated 15.07.2015. Hon'ble Supreme Court examined the issue and reaffirmed that bagasse is not a manufactured product. The Judgement applies to both periods, before and after the insertion of explanation in Section 2(d) of the Central Excise Act, 1944 by the Finance Act, 2008. It may also be noted that Hon'ble High Court of Bombay in

case of M/s Hindalco Industries Ltd. vs.Union of India [2015(315)E.L.T.10 (Bom.)] came to similar conclusion in relation to dross and skimming of aluminium, zinc or other non-ferrous metal.

3. In the light of the above judgments, circulars of the Board on the subject viz 904/24/2009-CX dated 28.10.2009, 941/02/2011-CX dated 14.02.2011 and instruction issued vide F.No.17/02/2009-CX(Pt.) dated 12.11.2014 have become non-est and are hereby rescinded. Cases kept in Call Book on the above issue may be taken out and adjudicated.

3. Now the facts remain is the reversal of CENVAT credit on input and input services in terms of Rule 6 of the CENVAT Credit Rules, 2004 which has been dealt in a confusing manner in para 4.2 of the above noted Circular dated 25.04.2016. It runs as follows:-

4.2 Consequently, Bagasse, Dross and Skimmings of non-ferrous metals or any such by product or waste, which are non-excisable goods and are cleared for a consideration from the factory need to be treated like exempted goods for the purpose of reversal of credit of input and input services, in terms of rule 6 of the CENVAT Credit Rules, 2004.

It seems that through executive instruction, reversal of CENVAT credit on exempted goods is reaffirmed despite judgement of the Hon'ble Supreme Court passed in the case of Union of India Vs. DSCL Sugar Limited as reported in 2015 (322) ELT 769 (SC).

4. In the instant case appellant had been asked to reverse the credit with interest etc. against clearance of pressmud. However, it has been made crystal clear in the above referred judgement that bagasse (a similar waste product like pressmud) is not a manufactured product but is only an agricultural waste and residue, which is not the result of any process and therefore cannot be treated as falling within the definition of Section 2(f) of the Central Excise Act, 1944 that defined a manufacturer and in the absence of manufacturing, there cannot be any excise duty and therefore, Rule 6 of the CENVAT Credit Rules, 2004 shall have no application. In obedience to the judicial precedent set by the Hon'ble Apex Court, we are of the considered view that such executive instruction as contained in the Circular dated 25.04.2016 at para 4.2 is not enforceable. Hence the order.

ORDER

6. The appeal is allowed and the order of the Commissioner of Central Excise (Appeals), Pune-II vide Order-in-Appeal No. P-II/RKS/44 to 52/2012 dated 07.02.2012 is here by set aside.

(Pronounced in the open court)

