(2021) 04 CESTAT CK 0036

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 40282 Of 2020

M/s.Bannari Amman Sugars Ltd. — APPELLANT

Vs

Commissioner Of CGST And CE — RESPONDENT

Date of Decision : 13-04-2021

Acts Referred:

Cenvat credit Rules, 2004 — Rule 2(d), 6(2), 6(3)

Citation : (2021) 04 CESTAT CK 0036

Hon'ble Judges : Sulekha Beevi C.S, J

Bench : Single Bench

Advocate : P.C. Anand, Arul C. Durairaj

Final Decision : Allowed

Judgement

1. Brief facts are that appellant is engaged in manufacture of rectified spirit, neutral spirit, de-natured spirit and fusel oil. In the process of distillation 'spent wash' emerged as waste. From another Unit which was manufacturing sugar/ molasses, the waste product 'press mud' emerged. They cleared 'press mud' and 'spent wash' from their factory to their bio-compost Unit. They were producing bio-compost and bio-super by processing the spent wash and press mud. The department was of the view that as the sales of the fertilizer, which is a new product took place in the yard, the appellant has to reverse the Cenvat credit availed on common inputs used in manufacture/clearance of spent wash and press mud in terms of Rule 6(2) and Rule 6(3) of Cenvat Credit Rules, 2004. Show-cause notice was issued for the period March, 2015 to June, 2017. After adjudication, the original authority, inter alia, confirmed the demand, interest and imposed penalty. Against this order, appeal was preferred before the Commissioner (Appeals), who rejected the appeal filed by the appellant. Aggrieved, the appellants are now before the Tribunal.

2. On behalf of the appellant, the learned consultant Shri P.C. Anand appeared and argued the matter.

3. He submitted that the department has issued the show-cause notice alleging that the appellant had used common inputs for the manufacture of spent wash and press mud and that they have to reverse the proportionate credit under Cenvat Credit Rules. It is submitted by him that the appellant has not consciously manufactured these items and the spent wash and press mud are only waste generated in the process of manufacture. The issue has been decided by the Tribunal in the appellant's own case vide Final Order Nos.42961-42963/2018, dated 16.11.2018 had followed these judgments and decided in favour of the appellant. He prayed that the appeal may be allowed.

4. The learned Authorised Representative Shri Arul C. Durairaj supported the findings in the impugned order.

5. Heard both sides.

6. The very same issue was considered by the Tribunal in the appellant's own case vide Final Order Nos.42961-42963/2018, dated 16.11.2018. The relevant paragraphs are reproduced as under:-

8.2 The above clarification includes items like Bagasse, Dross and Skimmings of non-ferrous metals or any such by-product or waste which are termed as "non-excisable goods" which find entry in Central Excise Tariff Act [CETA], 1985. The interpretations drawn by various courts including the Hon'ble Supreme Court and also the clarifications issued by the Board only lead to the conclusion that all non-excisable goods are wastes, but it may be a case that all wastes are non-excisable. Non-excisable goods are treated as exempted goods by virtue of being not listed in CETA, for example, water which is exempted and hence, non-excisable. Bagasse, which by virtue of being a non-excisable good is a byproduct or waste, is placed under sub-heading 2303 2000 though attracting 'nil' rate of duty. The same is not the case with press mud, which is clearly not defined nor is it declared as nonexcisable good, but the same does not figure out in CETA because it is just a waste. The legislature is, therefore, clear in terming what is a non-excisable good/item or a waste and while clarifying, even the Board has omitted press mud while covering all other 'wastes' which are non-excisable goods. Therefore, "any such byproduct" cannot take a different colour than Bagasse, Dross and Skimmings of non-ferrous metals, nothing more nothing less and that it should figure out as a 'non-excisable goods' per se. Therefore, I am of the view that press mud cannot be compared with other by-products like bio-compose or even Bagasse for that matter. Moreover, from a bare reading of Explanations 1 and 2 (supra), I find that the press mud does not fit into the definition of "exempted goods", as defined under 2(d) of CCR because it is not an excisable good; nor can it be termed as a final product because it is not manufactured or produced from input or using input service. This is because it is a natural by-product which does not involve any effort nor is it the primary intention of a sugar manufacturer to intent to manufacture press mud.

9. In view of the above, I am of the considered opinion that the amendment

heavily relied on by the lower authorities does not cover "waste" and there being no change with regard to facts, the order of this Bench in the appellant's own case (supra) is squarely applicable, the assessee is not liable to pay any duty and, therefore, the demand is set aside."

7. Following the said decision, I hold that the demand cannot sustain and requires to be set aside. The appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

