(2021) 11 CESTAT CK 0036

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 190 Of 2012

Shree Khedut Sahakari Khand Udyog Mandli Ltd — APPELLANT

Vs

C.C.E. And S.T.-Surat-II — RESPONDENT

Date of Decision : 09-11-2021

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 2(d), 2(f), 6, 6(3)

Citation : (2021) 11 CESTAT CK 0036

Hon'ble Judges : Ashok Jindal, J;Raju, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the impugned order wherein, the demand has been confirmed at the rate of 5% of the value of exempted goods.

2. The brief facts of the case are that that appellant is manufacturer of Sugar, Molasses and Ethanol etc. During the course of manufacturing of the above said products, the appellant procured certain inputs and availed cenvat credit thereon. Being while manufacturing sugar, one product namely "baggase" arises which is an exempted product and has been classified under CSH 23 and duty liability is indicated as Nil, therefore, by issuance of Show Cause Notice it has been alleged that against the appellant that as "baggase" is an exempted goods manufactured by the appellant and the appellant is not maintaining any separate account for manufacturing of exempted as well as dutiable goods, the appellant in terms of rule 6(3) of cenvat rules 2004, is liable to pay 5% of the value exempted goods i.e. "baggase". The matter was adjudicated, the demand was confirmed along with interest and penalty was also imposed. Against the said order, the appellant is before us.

3. Heard the parties, as facts of the case are not in dispute that during course of manufacturing of sugar, "baggase" arises which is exempted from duty therefore, the issue arises is that whether the appellant is liable to pay 5% of the value of

exempted goods i.e. "baggase" or not?

3.1 As the issue has been settled by the Hon'ble apex court in the case of Union of India Vs. DSCL SUGAR LTD 2015 (322) ELT 769 (SC) wherein the Hon'ble apex court has held as under.

6. The aforesaid judgment was pronounced by this Court related to the period before 2008. In the year 2008 there was an amendment in Section 2(d) as well as in Section 2(f) of the Act which defines 'excisable goods' and 'manufacture' respectively. Section 2(d) with the said amendment reads as under :

Section 2(d) - "excisable goods" means goods specified in [The First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt;

Explanation - for the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable."

7. As per the aforesaid explanation, "goods" would now include any article, material or substance capable of being bought or sold for consideration and as such goods shall be deemed to be marketable. Thus, it introduce the deeming fiction by which certain kind of goods are treated as marketable and thus excisable.

8. However, before the aforesaid fiction is to be applied, it is necessary that the process should fall within the definition of "manufacture" as contained in Section 2(f) of the Act. The relevant portion of amended Section 2(f) reads as under :

Section 2(f) - "manufacture" includes any process -

(i) incidental or ancillary to be completion of a manufactured product;

(ii) which is specified in relation to any goods in the section or Chapter notes of [The First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to [manufacture; or]

(iii) which in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer; and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production of manufacture on his own account;"

9. The Revenue sought to cover the case under sub-clause (ii) as per which the process which is satisfied in relation to any goods in the Section or Chapter notices of the First Schedule to the Central Excise Tariff Act, 1985 would amount to 'manufacture'. Here again, fiction is created by including those goods as

amounting to manufacture in respect of which process is specified in the Section or Chapter notices of the First Schedule.

10. In the present case it could not be pointed out as to whether any process in respect of Bagasse has been specified either in the Section or in the Chapter notice. In the absence thereof this deeming provision cannot be attracted. Otherwise, it is not in dispute that Bagasse is only an agricultural waste and residue, which itself is not the result of any process. Therefore, it cannot be treated as falling within the definition of Section 2(f) of the Act and the absence of manufacture, there cannot be any excise duty.

3.2 As the Hon'ble apex court has held that Rule 6 of cenvat credit rules, 2004 is not applicable to the facts of the case. In that circumstances, no demand under rule 6(3) of cenvat credit rules 2004 is sustainable against the appellant.

4. Therefore, the impugned order deserves no merit and hence set aside. In result appeal is allowed with consequential relief, if any.

(Operative portion pronounced in the open court)