
(2015) 07 SC CK 0131

In the Supreme Court Of India

Case No : Civil Appeal Nos. 3947 of 2013, 3948 of 2013, 3949 of 2013, 9332 of 2013, 10998 of 2013, 5814 of 2015, 5815-5816 of 2015, 5817 of 2015, 5818 of 2015, 5819-5821 of 2015, 5822 of 2015, 1231-1232 of 2014, 1237 of 2014, 2761-2763 of 2014, 5823 of 2015, 5824 o

Union of India

APPELLANT

Vs

DSCL Sugar Ltd.

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2
CENVAT (Credit) Rules, 2004 — Rule 6, Rule 6(3)

Citation : (2015) 322 ELT 769

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : K. Radhakrishna, Senior Advocate, Sunita Rani Singh, B. Sunita Rao, R.K. Verma, B. Krishna Prasad, Neelam Chand and Anurag, for the Appellant; S.K. Bagaria, Rajiv Dutta, Manish K. Bishnoi, K. Ajit Singh, Narinder Verma, Praveen Kumar, Vinay Garg, Sushil B

Final Decision : Dismissed

Judgement

1. In Bagasse Matters: Civil Appeal No. 3947/2013; Civil Appeal No. 3948/2013; Civil Appeal No. 1237/2014; Civil Appeal No. 3949/2013; Civil Appeal No. 6814/2014; Civil Appeal No. 10998/2013; Civil Appeal No. 4488/2014; Civil Appeal No. 6813/2014; SLP (C) No. 23659/2013; SLP (C) No. 6687/2014; SLP (C) No. 22817/2013; SLP (C) No. 23028-30/2013; SLP (C) No. 3341/2014; SLP (C) No. 22378-22379/2013; SLP (C) No. 3511/2015; SLP (C) No. 17236/2013; SLP (C) No. 22380/2013; SLP (C) No. 11958/2014 : Leave granted in all the special leave petitions. All these appeals are filed by the Revenue and the question which arises for consideration is common, namely, whether Bagasse which emerges as residue/waste of sugarcane is subjected to excise duty or not. The excitability of the aforesaid residue depends on the answer to the question as to whether it is manufactured product and falls within the definition of

manufacture" as contained in Section 2(f) of the Central Excise Act. The facts in brief are as under:

2. Respondents herein are manufacturer of sugarcane and molasses falling under Chapter sub-heading 1701 11 90 and 1703 10 00 respectively, of the First Schedule to the Central Excise Tariff Act, 1985. In the process of manufacture of sugar, sugarcane is crushed, its juice is extracted and Bagasse emerges as residue/waste of sugarcane.

3. It is not in dispute that Bagasse is otherwise classified under Chapter sub-heading No. 2303 20 00 of the First Schedule to the Central Excise Tariff Act, 1985 and attracts nil rate of duty.

4. However, show cause notices were issued to the Respondents herein stating that Bagasse would be subject to duty under the Central Excise Act, 1944, as "other products". These show cause notices were issued to the Respondents in terms of the provision contained in Rule 6(3) of the Cenvat Credit Rules, 2004 demanding various amounts. The said show cause notices were challenged by the Respondents filing writ petitions in the High Court of Allahabad. The High Court has allowed these writ petitions holding that Bagasse being a waste and not a manufactured product, no duty is payable thereupon. For arriving at this conclusion, the High Court also have relied upon the judgment of this Court in Balrampur Chini Mills Ltd. in C.A. No. 2791 of 2005 decided on 21-7-2010 [2015 (320) E.L.T. A258 (S.C.)].

5. 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."

6. 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.

7. 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;"

8. 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.

9. 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.

10. Since it is not a manufacture, obviously Rule 6 of the Cenvat Rules, 2004, shall have no application as rightly held by the High Court.

Civil Appeal No. 9332 of 2013 : CCE v. M/s. Saryoo Sahakari Chini Mills Ltd.

11. Since Bagasse is held not to be result of any manufacture, this appeal is also dismissed.

1. SLP(C) No. 3340 of 2013 : Union of India v. Haidergarh Chini Mills
2. SLP(C) No. 3342 of 2014 : Union of India v. Akbar Pur Chini Mills
3. SLP(C) No. 3344 of 2014 : Union of India v. Gularia Chini Mills
4. Civil Appeal No. 2761 of 2014 : Union of India v. Manakpur Chini Mills
5. Civil Appeal No. 2762 of 2014 : Union of India v. Kumbi Chini Mills
6. Civil Appeal No. 2763 of 2014 : Union of India v. Manakpur Chini Mills

7. SLP(C) No. 10273 of 2014 : Union of India v. Upper Ganges Sugar & Ind. Ltd.

8. Civil Appeal No. 1231-1232 of 2014:

Cenvat Credit in respect of electricity was denied only on the premise that Bagasse attracts excise duty and consequently Rule 6 of the Cenvat Credit Rule is applicable. Since this action of the Appellant is found to be erroneous, all these appeals of the Revenue also stand dismissed.