

(2016) 07 MAD CK 0068

MADRAS HIGH COURT

Case No: C.M.A. No. 1905 of 2015

Commr. of C. Ex., Salem

APPELLANT

Vs

Salem Co-Operative Sugar Mills
Ltd.

RESPONDENT

Date of Decision: July 22, 2016

Citation: (2016) 339 ELT 572

Hon'ble Judges: S. Manikumar and D. Krishnakumar, JJ.

Bench: Division Bench

Advocate: Shri V. Sundareswaran, SSC, for the Appellant; Shri Hari Radhakrishnan,
Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

S. Manikumar, J.—Civil miscellaneous appeal is directed against the Final Order No. 41001/2014, dated 11-12-2014 passed by Customs, Excise and Service Tax Tribunal, Chennai - 600 006, reversing the order of original authority, namely Commissioner of Central Excise, Salem, dated 28-11-2007 passed in No. 10/2007.

2. Short facts leading to the appeal are that the respondent, namely M/s. Salem Co-operative Sugar Mills Ltd., is engaged in manufacture of sugar falling under Chapter Heading 1701. Molasses manufactured during the course of manufacture of sugar is being captively consumed on payment of duty for manufacturing natural alcohol, denatured spirit and ethanol in their distillery plant. They also procure molasses on payment of duty from outside. They had availed cenvat credit of duty paid on both molasses manufactured by them and bought out molasses. They utilised the Cenvat credit availed on molasses for payment of duty on final products. They used to reverse the Cenvat credit attributable on the inputs utilised for manufacture of exempted goods under Rule 6(3)(a) till December, 2005. From 1-1-2006 they started paying 10% of the sale price of the exempted goods viz. "un-denatured ethyl alcohol, rectified spirit and extra neutral alcohol falling under Chapter Tariff Heading No. 2204, on its clearances under Rule 6(3)(b) of the Cenvat

Credit Rules, 2004. With effect from 28-2-2005 the above said C.H. No. 2204 was revised to C.H. No. 2207 under the new 8 digit tariff classification. As per the provisions of Rule 6(3)(a)(i) of Cenvat Credit Rules, 2004, they were required to pay an amount equivalent to the Cenvat credit attributable to molasses used in the manufacture of non-dutiable final products at the time of their clearance from their factory. As per the provisions of erstwhile Rule 6(3)(a)(i) of the Cenvat Credit Rules, 2004, the respondent was not entitled to pay an amount of 10% of the total price of the un-denatured ethyl alcohol cleared from the factory in terms of Rule 6(3)(b) of Cenvat Credit Rules, 2004 and hence the appellant issued a show cause notice dated 5-2-2007.

3. The appellant submitted a reply to the show cause notice on 12-5-2007. Rejecting the reply, the adjudicating authority, passed an order dated 28-11-2007, disallowing Cenvat credit on molasses. The adjudicating authority also imposed interest under Rule 15 of Cenvat Credit Rules, 2004 r/w Section 11AB of Central Excise Act, 1944. Penalty also been imposed under Rule 15(1) of Cenvat Credit Rules, 2004, alleging contravention of the said Rules.

4. Aggrieved by the same, an appeal was filed under Section 35B of the Central Excise Act, 1944 before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai, which dismissed the appeal. Thus the present appeal is filed under Section 35G of the Central Excise Act, 1944 on the following substantial questions of law.

"1. Whether the Tribunal is correct in holding that the respondent had correctly discharged the obligation under Rule 6(3) of the Cenvat Credit Rules, 2004?

2. Whether the Tribunal is correct in deleting the mandatory penalty?"

5. Heard both parties.

6. After hearing Mr. V. Sundareswaran, learned Senior Standing Counsel (Central Excise) appearing for the appellant and Mr. Hari Radhakrishnan, learned counsel for the respondent, we are of the considered view that the order impugned in this appeal, has to be set aside and that the Tribunal should revisit and adjudge certain points for consideration. In this context, we also wanted to know from both parties, as to whether a consent order could be passed.

7. Mr. V. Sundareswaran, learned Senior Standing Counsel (Central Excise) appearing for the appellant submitted that the view expressed by this court was put across to the Department and that the department has agreed. Learned Senior Standing Counsel for the appellant further submitted that in the event of the matter being remanded to the Tribunal, the following points requires for consideration :

(i) The respondents having failed to maintain separate accounts for dutiable and non-dutiable goods. Hence had to follow procedure under Rule 6(3) of Cenvat Credit Rules, 2004.

(ii) Non-Denatured ethyl Alcohol is exempted goods, the duty being levied is "NIL" as per Central Excise (Removal of Difficulties) Rules, 2005. Consequently, the respondent had to reverse the Cenvat credit actually availed as per the OIO passed by the adjudicating authority.

(iii) The CESTAT had though admitted the fact that the respondent had not maintained separate accounts for the dutiable and non-dutiable goods had fell into an error in directing to remit 10% on the value of the finished goods instead of actual reversal of Cenvat credit availed on the exempted goods.

(iv) Deletion of penalty is unwarranted.

8. On the side of the respondent, Mr. Hari Radhakrishnan, learned counsel for the respondent submitted that the following issues requires for consideration :

1. Whether the un-denatured ethyl alcohol/rectified spirit manufactured by the assessee are "exempted goods" in terms of Rule 2(d) of the Cenvat Credit Rules, 2004 and consequently whether the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004 apply to the present case?

2. Whether the assessee is liable to pay 10% of the value of un-denatured ethyl alcohol/rectified spirit at all in terms of Rule 6(3)(b) of the Cenvat Credit Rules, 2004?

9. Both the learned counsel for the parties, have consented for the order impugned in Final Order No. 41001/2014, dated 11-12-2014 passed by Customs, Excise and Service Tax Appellate Tribunal, Chennai - 600 006 to be set aside and the matter be remanded for adjudication on the following points :

(i) The respondents having failed to maintain separate accounts for dutiable and non-dutiable goods. Hence had to follow procedure under Rule 6(3) of Cenvat Credit Rules, 2004.

(ii) Non-Denatured ethyl Alcohol is exempted goods, the duty being levied is "NIL" as per Central Excise (Removal of Difficulties) Rules, 2005. Consequently, the respondent had to reverse the Cenvat credit actually availed as per the OIO passed by the adjudicating authority.

(iii) The CESTAT had though admitted the fact that the respondent had not maintained separate accounts for the dutiable and non-dutiable goods had fell into an error in directing to remit 10% on the value of the finished goods instead of actual reversal of Cenvat credit availed on the exempted goods.

(iv) Deletion of penalty is unwarranted.

(v) Whether the un-denatured ethyl alcohol/rectified spirit manufactured by the assessee are "exempted goods" in terms of Rule 2(d) of the Cenvat Credit Rules, 2004 and consequently whether the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004 apply to the present case?

(vi) Whether the assessee is liable to pay 10% of the value of un-denatured ethyl alcohol/rectified spirit at all in terms of Rule 6(3)(b) of the Cenvat Credit Rules, 2004?

10. Placing on record the above submissions, impugned Final Order No. 41001/2014, dated 11-12-2014 passed by Customs, Excise and Service Tax Appellate Tribunal, Chennai - 600 006 is set aside. Civil miscellaneous appeal is allowed to the extent indicated. The matter is remanded to Tribunal to deal with the above issues in accordance with law. Tribunal is directed to issue notice to the parties concerned. However, there shall be no order as to cost.