

Customs, Excise and Gold Tribunal - Bangalore

Ugar Sugar Works Ltd. vs The Commissioner Of C. Excise on 5 May, 2004

Equivalent citations: 2004 (96) ECC 348

Bench: S Peeran, M T K.C.

ORDER K.C. Mamgain, Member (T)

1. This appeal is filed by M/s Ugar sugar Works Ltd., Belgaum, against the Order (Original) No. 13/2001 dated 18.12.2001, passed by the Commissioner of Central Excise, Belgaum.

2. The appellants are engaged in the manufacture of Sugar. During the process of manufacture of Sugar, Molasses falling under Tariff Sub Heading 1703.90 also emerges as a by-product. The Molasses was mostly being captively used by them in their distillery for manufacture of Rectified Spirit and a part of it was also being sold, on payment of appropriate duty, to the buyer. The entire quantity of molasses either to their distillery or to the outside buyers was cleared on payment of duty. They took credit of duty paid on the molasses which was being captively consumed by them in their distillery for the manufacture of rectified Spirit. The Rectified Spirit is chargeable to nil rate of duty under Sub Heading 2204.90. A portion of rectified Spirit was also cleared as such to other parties and a portion of the same was utilised by the appellants for manufacture of Denatured Ethyl Alcohol, Amyl Alcohol and Indian Made Liquor in their distillery. The appellant has followed the procedure of the then Rule 57CC / Rule 57AD by paying 8% of value on exempted final product, namely Rectified Spirit and paid appropriate duty on the excisable products.

3. The case of the department is that the appellants are not entitled to proportionate Modvat / Cenvat credit on the quantity of molasses contained in the Indian Made Liquor, a non-excisable product, manufactured and cleared by the appellants. They cannot avail the facility of the then Rule 57CC/57AD on such captive consumption. Hence, demand was raised for a quantity 14579.08 MTs of Molasses used for manufacture of Indian Made liquor on which they availed Modvat / Cenvat to the extent of Rs. 72,89,540/-. The case was adjudicated by the Commissioner who came to the conclusion that the appellants have suppressed the fact of manufacture of Indian Made Liquor, a non-excisable commodity, in their factory by not declaring the same to the department in their declaration filed under Rule 173B with an intention to avail the inadmissible Modvat/Cenvat credit on the quantity of molasses used for manufacture of non-excisable products. He, therefore, disallowed the credit of Rs. 72,89,540.00 on the Molasses consumed in the manufacture of Indian Made Liquor and adjusted the amount of 8% of the price of rectified Spirit, paid by them against the demand. He also imposed penalty of Rs. 30,20,793/- on the appellants under Section 11AC of the Central Excise Act, 1944, besides charging interest.

4. Shri V.B. Gaikwad, learned Advocate appearing for the appellants pleaded that the appellants are using Molasses as input in their distillery for manufacture of Rectified Spirit falling under CSH 2204.90, Denatured Spirit falling under CSH 2204.10, Amyl Alcohol falling under CSH 2905.90 and Fusel Oil falling under CSH 3824.90. The rectified spirit is chargeable to nil rate of duty whereas the remaining final products are cleared on payment of duty. The appellants are also having a Liquor Manufacturing Section where they are manufacturing Indian Made Liquor which is out of the purview of the Central Excise Tariff. The part quantity of rectified spirit manufactured in their

distillery is sold to other liquor manufacturers at nil rate of duty and the remaining quantity of the rectified spirit is transferred to their Liquor Manufacturing Section for use in the manufacture of Indian made Liquor. The demand confirmed against the appellants pertains to the period from 1997-98 to 1999-2000. The commissioner has held that the appellants have not declared manufacturing activity of Indian Made Liquor, a non-excisable commodity, in their declaration filed under rule 173B. The learned Counsel submits that since the appellants were under the bonafide belief that the Indian Made Liquor being a non-excisable commodity and subject to State Excise levy, is totally out of the purview of the Central Excise Law. However, they were regularly following the practice of paying 8% amount on the quantity of Rectified Spirit transferred to their Indian made Liquor Section and the remark to that effect has always been mentioned by the appellants in their RG 23A Part II account as well as in their RT-12 returns filed from time to time during the material period of dispute. The department was always aware of the manufacture of Indian Made Liquor and the captive consumption of Rectified Spirit for the manufacture of Indian Made Liquor. The Tribunal in case of Kesar Enterprises Vs. CCE, reported in 2001 (130) ELT 93 has clearly laid down that for the purpose of Rule 57CC, the rectified spirit is the final product and hence the assessee while captively consuming the quantity of rectified Spirit in the manufacture of IML which is a non-excisable commodity, is bound to reverse 8% amount as per the provisions of Rule 57 CC on the said quantity of Rectified Spirit. In view of the ratio of the said decision, their practice of reversing 8% amount on the quantity of rectified spirit captively consumed in the manufacture of IML is correct. He further pleaded that in case of Kesar Enterprises Ltd. vs. CCE, Lucknow reported in 2002 (49) RLT 547 (CEGAT-Del.) identical issue has been decided wherein the Tribunal has held that-

"Molasses used in manufacture of rectified spirit which is captively used in manufacture of non-excisable country liquor - credit of duty taken in respect of molasses, not to be denied but to be reversed @ 8% of the value rectified spirit"

It was pleaded that since the issue has been finally decided by the Tribunal in favour of the assessee, therefore, the order of the Commissioner may be set aside.

5. Shri L. Narasimha Murthy, learned SDR appearing for the Revenue defended the order of the Commissioner and in support of his plea, he relied upon the Tribunal decision in case of Wheel & Axle Plant vs. Commissioner of Central Excise, Bangalore-II reported in 2003 (161) ELT 843 (Tribunal).

6. We have carefully considered the submissions made by both the sides. We find that the issue to be considered in this case is whether the appellants are required to reverse actual amount of Modvat/Cenvat credit availed on the Molasses used for manufacture of rectified spirit consumed by them in their liquor manufacturing section for manufacture of Indian Made Liquor (IML) or can the appellants reverse 8% of the value of rectified spirit as provided under Rule 57CC. Molasses is used by the appellants for manufacture of rectified spirit which is exempted from duty and also dutiable product, i.e. Alcohols. Since they are using molasses as common input, they availed Modvat/Cenvat credit on molasses and reversed 8% of the price of the rectified spirit cleared as such and consumed in their distillery for manufacture of IML. The department's claim is that since the IML is a

non-excisable product which is manufactured from rectified spirit used in their distillery and Modvat / Cenvat credit is availed for molasses, therefore, the appellants are not entitled for the benefit under Rule 57CC / 57 AD as that procedure is applicable only to manufacture of products which are excisable. Therefore instead of reversing 8% price of final product, i.e. rectified spirit, the appellants are required to reverse the entire credit taken on the molasses which has gone into rectified spirit which is in turn used in the manufacture of IML. We find that the issue has already been decided by the Tribunal in case of Kesar Enterprise Ltd. (supra) wherein it was decided that the appellants are entitled to avail Modvat credit on the molasses and they were liable to pay amount @ 8% of the value of rectified spirit being cleared for manufacture of IML in terms of Rule 57 CC of the Central Excise Rules. We also find that in case of Commissioner of Central Excise, Lucknow Vs. Kesar Enterprises Ltd (2001 (130) ELT 93) it was held that -

"Any intermediate product can be an intermediate product for the purpose of manufacture of IMFL but by itself it is final product also. Rectified spirit is sold in the market. Thus it is an excisable product falling under chapter sub heading 2204.90. IMFL is non-excisable product. Rule 57CC speaks of final product as exempt or chargeable to nil rate of duty. Thus it will cover only excisable product and not non-excisable product. Hence, we hold that IMFL is not a final product in the instant case. We are therefore left only with the rectified spirit. Rectified spirit is an excisable product as it is classifiable under Chapter 22. Thus both the words "Exempt from the whole of duty of excise or chargeable to nil rate of duty" will be applicable to rectified spirit. Rectified spirit is also cleared as rectified spirit and therefore, an amount of 8% of the price shall be reversible. We accordingly hold that 8% of the sale price of extra neutral alcohol and rectified spirit which are chargeable to nil rate of duty while removing from the factory shall be debitable and hence is sustainable in law."

In view of the afore stated decision of the Tribunal, following the same, we do not find any merit in the plea of the department. The case law referred to by learned DR in case of Wheel & Axle Plant (supra) is not applicable to the fact of this case. Accordingly, we allow the appeal.