Central Excise: Electricity generated from bagasse is not in chapter 27: CESTAT

Audit contention - Electricity is incorporated in Central Excise Tariff with effect from 28/2/05, however, column of rate of duty is kept blank, electricity becomes taxable goods although no duty had been specified. As no date of duty has been indicated for electrical energy, the said item is to be treated as exempted goods.

The audit noticed that for the period January, 2007 to December, 2008 the appellant had not made the payment of 10% of the amount of sale price of exempted final product, that is electricity sold, to U.P.Power Corporation Ltd. nor have made reversal of proportionate Cenvat credit availed on inputs, input services used and consumed in generation of electricity sold, in terms of rule 6(3) of CCR 2004.

Accordingly, SCN dated 28/9/11 was issued invoking extended period and proposing to recover Rs.1,97,96,236/- and imposition of interest and penalty.

The adjudicating authority upheld the allegations leveled in the SCN but confirmed an amount of Rs.1,57,55,793/- along with interest and an equal penalty. The amount of proportionate Cenvat credit debited of Rs.1,60,002/- was also appropriated.

While refuting the allegations the appellant submitted that only the surplus electricity generated, as it cannot be stored, is sold to U.P. Power Corporation Ltd.; that the interpretation of the revenue on the basis of clause 1 (c) of Additional Notes of General Rules for the interpretation of the first schedule to hold that "as no rate of duty is indicated for electrical energy it is exempted goods" is not sustainable since a specific definition is given of ‘exempted goods' under the CCR. Reliance is also placed on the Tribunal ruling in Ex. Appeal No. E/52882/2014-Ex (SM), Final Order No. 51791/2015-Ex (SM) dated 08.08.2015 wherein similar demand was under consideration and the Tribunal had allowed the appeal in favour of the appellant.

In that case, the Tribunal had concluded thus -

> "9. As none of the cases relied upon by the ld.A.R. have dealt with the issue of generation of electricity from bagasse, therefore, the said decisions are not applicable to the facts of this case. Further, the facts of the case in hand are similar to the facts of the case of Gularia Chini Mills (supra) wherein the Hon'ble High Court as well as this Tribunal has held that electricity generated from bagasse is not an excisable goods and does not qualify as tariff item as per Chapter 27 of the Central Excise Act, 1984. In these circumstances, the issue is answered in favour of the appellant is not required to pay 10% of the value of the electricity sold to M/s U.P.Power Corporation Ltd. Further, I also find that appellant has already reversed the Cenvat credit attributable to input/input services used in generation of electricity sold to M/s U.P.Power Corporation Ltd. which is an essential requirement of Rule 6 (3) of the Cenvat Credit Rules, 2004 and same has not been dealt by both the lower authorities. In these circumstances, I hold that as the appellant has already reversed the Cenvat Credit on input/input services attributable to generation of electricity sold to M/s U.P.Power Corporation Ltd. is sufficient in compliance to provisions of Rule 6 of the Cenvat Credit Rules, 2004, therefore, the appellant is not required to pay 10% of the value of electricity sold to M/s U.P.Power Corporation Ltd."

The AR supported the order of the lower authority. On a query as to whether the revenue have filed further appeal in respect of the aforementioned ruling of the Tribunal, the AR submitted that he is not aware of the same. The appellant also informed that they had not received any notice in respect of any appeal filed by revenue before the High Court.

The Bench observed that the issue in the present appeal was, therefore, no longer res-integra and the same was covered by aforementioned Tribunal decision.

The impugned order was set aside and the appeal was allowed.