IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.133 OF 2015

The Commissioner, Central Excise and
Service Tax, Kolhapur Commissionerate,
1079/2KH, Vasant Plaza Commercial
Complex, 4th floor, Rajaram Road, Neal
Bagal Chowk, Kolhapur- 416 001 ...Appellant

Versus

M/s. Shree Datta Sahakari Sakhar Karkhana
Ltd., Dattanagar Shirole, Dist. Kolhapur ...Respondent

.....

Mr. Pradeep S. Jetly i/b. Mr. J.B. Mishra for the Appellant.
None for the Respondent.

CORAM : ANOOP V. MOHTA &
SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 24th JULY, 2017.

ORAL JUDGMENT (Per Anoop V. Mohta, J.):-

Heard the learned counsel appearing for the Appellant. This is an appeal under Section 35(g) of the Central Excise Act, 1944. The Appellant, Department, has raised the following issue :-

> "(a) Whether with effect from 28-02-2005, the electricity generated from Bagasee, is an exempted excisable product and whether on its sale value the Respondents is liable to pay an amount at prescribed rate in terms of Rule 6(3)(i) of Cenvat Credit Rules, 2004 for the period from 2005-06 and 2006-07?"

2. The learned counsel appearing for the Appellant has fairly pointed out a judgment of the Supreme Court in ***Union of India vs. DSCL Sugar Ltd.,***[1] whereby after considering the evidence of law including the issues about the excisability of the produce “Bagasse”, which is settled waste and residue of agricultural produce, held that the production of Bagasse does not amount to manufacture, hence, not excisable under section 2(f) of the Central Excise Act, 1944 and Cenvat Credit Rules, 2004. Relevant paragraphs 10, 11 and 13 of the said judgment are as under:

> *“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.*
>
> *11. 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.*
>
> *12. xxx*
>
> *13. Cenvat Credit in respect of electricity was denied only*

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> *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.”*

3. In view of this settled position of law, the present appeal of Revenue stands disposed of accordingly.

(ANUJA PRABHUDESSAI, J.) **(ANOOP V. MOHTA, J.)**