

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 87506 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-000-APP-206 to 218/2017-18 dated 03.08.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune)

M/s Olam Agro India Pvt. Ltd. **Appellant**
(Formerly known as M/s Hemarus Industries Ltd.)
Gat No. 76, Channehatti, Rajgoli (KH),
Tal. Chandgad, Dist. Kolhapur – 410 508

VERSUS

Commissioner of CGST & Central Excise, Pune-I **Respondent**
41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune – 411 001

WITH

Excise Appeal No. 87513 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-000-APP-206 to 218/2017-18 dated 03.08.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune)

M/s Shree Chh. Shahu S.S.K. Ltd. **Appellant**
At. Kagal, Tal. Kagal, Dist. Kolhapur – 416216

VERSUS

Commissioner of CGST & Central Excise, Pune-I **Respondent**
41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune – 411 001

APPEARANCE:

Shri J.N. Somaiya, Advocate for the Appellants

Shri Xavier Mascarenhas, Authorized Representative for the Respondent

AND

Excise Appeal No. 87523 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-000-APP-206 to 218/2017-18 dated 03.08.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune)

M/s Kisanveer Satara S.S.K. Ltd. **Appellant**
Bhuinj, P.O. Kisanveer Nagar,
Tal. Wai, Dist. Satara – 415 530

VERSUS

Commissioner of CGST & Central Excise, Pune-I **Respondent**
41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune – 411 001

AND

Excise Appeal No. 87525 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-000-APP-206 to 218/2017-18 dated 03.08.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune)

M/s Jaywant Sugars Ltd.

A/P. Dhavarwadi, Tal. Karad,
Dist. Satara – 415 110

.... Appellant

VERSUS

Commissioner of CGST & Central Excise, Pune-I

41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune – 411 001

.... Respondent

AND

Excise Appeal No. 87527 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-000-APP-206 to 218/2017-18 dated 03.08.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune)

M/s Kumbhi Kasari S.S.K. Ltd.

Kuditre, Tal. Karveer, Dist. Kolhapur – 416 204

.... Appellant

VERSUS

Commissioner of CGST & Central Excise, Pune-I

41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune – 411 001

.... Respondent

AND

Excise Appeal No. 87537 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-000-APP-206 to 218/2017-18 dated 03.08.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune)

M/s Y.M. Krishna S.S.K. Ltd.

Rethare-BK, Tal. Karad, Dist. Satara – 415 108

.... Appellant

VERSUS

Commissioner of CGST & Central Excise, Pune-I

41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune – 411 001

.... Respondent

AND

Excise Appeal No. 87546 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-000-APP-206 to 218/2017-18 dated 03.08.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune)

M/s Shree Gurudatta Sugars Ltd.

Gat No. 61/A, Akiwat-Takaliwadi Road,
Takaliwadi, Tal. Shirol,
Dist. Kolhapur – 416 108

.... Appellant

VERSUS

Commissioner of CGST & Central Excise, Pune-I Respondent
41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune – 411 001

AND

Excise Appeal No. 87970 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-000-APP-206 to 218/2017-18 dated 03.08.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune)

M/s Jawahar S.S.K. Ltd. Appellant
Shri Kallapanna Awadenagar, Hupari-Yalgud,
Tal. Hatkanangale, Dist. Kolhapur – 416 203

VERSUS

Commissioner of CGST & Central Excise, Pune-I Respondent
41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune – 411 001

APPEARANCE:

Shri J.N. Somaiya, Advocate for the Appellants

Shri Ranjan Kumar, Authorized Representative for the Respondent

AND

Excise Appeal No. 87542 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-000-APP-206 to 218/2017-18 dated 03.08.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune)

M/s S.M. Kagal Taluka S.S.K. Ltd. Appellant
Sadashiv Nagar, Himmadwada-Kaulage,
Tal. Kagal, Dist. Kolhapur – 416 216

VERSUS

Commissioner of CGST & Central Excise, Pune-I Respondent
41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune – 411 001

AND

Excise Appeal No. 87545 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-000-APP-206 to 218/2017-18 dated 03.08.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune)

**M/s Sir Senapati Santaji Ghorpade
Sugar Factory Ltd.** Appellant
Belewadi-Kamma, Tal. Kagal,
Dist. Kolhapur – 416 216

VERSUS

Commissioner of CGST & Central Excise, Pune-I Respondent
41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune – 411 001

AND

Excise Appeal No. 87551 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-000-APP-206 to 218/2017-18 dated 03.08.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune)

M/s Dudhganga Vedganga S.S.K. Ltd.

.... Appellant

Vidri, Mouninagar, Tal. Kagal,
Dist. Kolhapur – 416 208

VERSUS

Commissioner of CGST & Central Excise, Pune-I

.... Respondent

41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune – 411 001

AND

Excise Appeal No. 87631 of 2017

(Arising out of Order-in-Appeal No. PUN-EXCUS-000-APP-206 to 218/2017-18 dated 03.08.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune)

M/s Shree Renuka Sugars Ltd.

.... Appellant

C/o DRK Panchganga S.S.K. Ltd.,
Ganganagar, Ichalkaranji,
Dist. Kolhapur – 416 001

VERSUS

Commissioner of CGST & Central Excise, Pune-I

.... Respondent

41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune – 411 001

APPEARANCE:

Shri J.N. Somaiya, Advocate for the Appellants

Shri A.K. Shrivastava, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85296-85307/2026

Date of Hearing: 17.02.2026

Date of Decision: 17.02.2026

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. The issue involved in all these appeals is identical and arising out of the common impugned order dated 03.08.2017 passed by the learned

Commissioner of Central Tax (Appeals-I), Pune. Accordingly, all the appeals are taken up together for hearing and a common order is being passed.

3. Brief facts of the case are that the appellants are engaged *inter alia*, in the manufacture of Sugar, Molasses and Ethyl Alcohol, falling under Chapter 17 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants avail CENVAT Credit of Central Excise duty paid on the inputs and service tax paid on the input services, which are used for payment of central excise duty on clearance of the said final products from the factory. Apart from manufacturing the said final products, the appellants are also engaged in generation of electricity, which are classifiable as 'Electrical Energy' under Tariff Item No. 2716 0000 of Central Excise Tariff Act, 1985. The electricity, so generated by the appellants, are used captively for manufacture of the said excisable goods within the factory and excess/ surplus quantity of generated electricity was sold out to the Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) without payment of Central Excise duty, inasmuch as no duty rate for electricity has been prescribed in the Tariff Act of 1985. Since the appellants are engaged in the manufacture of excisable goods and sold electricity to outside parties, which are non-dutiable, the Department had interpreted that CENVAT credit on common inputs and input services cannot be taken for both type of activities undertaken by them. Since the appellant did not maintain any separate records, bifurcating usage of inputs and input services for manufacture of excisable goods and for generation of electricity, the Department had interpreted that provisions of Rule 6(3) of the CENVAT Credit Rules, 2004 should be applicable and thus, the appellants are liable to pay 6% of the value of electricity sold to the outside parties. The show-cause notices issued in this regard were adjudicated by the original authorities vide various Orders-in-Original, wherein the proposals made in the SCNs were confirmed. On appeal against those adjudication orders, the learned Commissioner (Appeals) vide the impugned order dated 03.08.2017 has upheld confirmation of the adjudged demands and rejected the appeals filed by the appellants. Feeling aggrieved with the impugned order dated 03.08.2017, the appellants have preferred these appeals before the Tribunal.

4. We find that an identical dispute in the case of M/s *Vaidyanath SSK Ltd. and others* came up for hearing before the Commissioner of GST, Aurangabad and vide Order-in-Original No. 25-44/CEX/COMMR/MKR/2021-22 dated 17.11.2021, the matter was adjudicated in favour of the assesseees, by dropping the show-case proceedings initiated against them. In the said adjudication order dated 17.11.2021, the learned Commissioner by relying upon the judgement delivered by the Hon'ble Supreme Court, in the case of *Union of India Vs. DSCL Sugar Ltd. - 2015 (322) E.L.T. 769 (S.C.)*, judgement of Hon'ble Allahabad High Court in the case of *Balrampur Chini Mills Ltd. Vs. Union of India - 2019 (368) E.L.T. 276 (All.)* and Hon'ble Delhi High Court in the case of *Commissioner of Central Excise and S. Tax LTU, Delhi Vs. Nangalamal Sugar Complex - 2020 (371) E.L.T. 501 (Del.)*, had held that electricity produced from bagasse by the assesses and sold to MSEDCL cannot be subjected to payment of amount equal to 6% of the value of electricity sold by them under Rule 6(3) of the CENVAT Credit Rules, 2004. The period of dispute involved in the said decided case by the Commissioner was from February 2015 to June 2017. In the present appeals, the period of dispute involved is from March 2015 to December 2015. There is no change in the statutory provisions during the period, for which the Order dated 17.11.2021 (supra) was passed by the Commissioner of GST, Aurangabad *vis-à-vis* the present impugned order passed by the learned Commissioner (Appeals). Thus, the issue arising out of the present dispute regarding payment of amount of 6% in terms of Rule 6(3) of the Rules of 2004, shall not be applicable in case of generation of electricity and wheeling out the same to M/s MSEDCL. We find that the order dated 17.11.2021 passed by the Commissioner of GST, Aurangabad (supra) has been accepted by the Committee of Chief Commissioners in their meeting held on 11.02.2022. Since, no appeal was preferred against the said order dated 17.11.2021, the matter arising out of the present dispute regarding payment of amount under Rule 6 (3) *ibid* has attained finality and cannot be agitated further. In view of the fact that the issue arising out of the present dispute, is no more open for any debate, in view of the adjudication order dated 17.11.2021 passed in the case of M/s Vaidyanath SSK Ltd. & others, we are of the view that different interpretation cannot be placed at this juncture, for deciding the present appeals differently.

5. Therefore, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands on the appellants. Accordingly, the impugned order is set aside and the appeals are allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha