CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 25163 of 2013

(Arising out of **Order-in-Original** No.15/2012-CE-HYD-III-ADJN (COMMNR) dated 28.09.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

M/s Madhucon Sugar & Power Industries Ltd., .. **APPELLANT**
Rajeswarapuram,
Ammagudem Post,
Nelakondapally Mandal,
Khammam,
Telangana – 507 160.

VERSUS

Pr. Commissioner of Central Tax Rangareddy - GST .. **RESPONDENT**
GST Bhavan,
H.No.1-98-7-43,
VIP Hills, Jaihind Enclave,
Madhapur, Hyderabad,
Telangana – 500 081.

APPEARANCE:
Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri B. Subhas Chandra Bose, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30271/2026

Date of Hearing: 02.02.2026
Date of Decision: 08.05.2026

[ORDER PER: A.K. JYOTISHI]

M/s Madhucon Sugar & Power Industries Ltd., (hereinafter referred to as appellant are in appeal against the Order-in-Original dated 28.09.2012, whereby, the Commissioner has confirmed the demand for recovery of Cenvat Credit of Rs. 1,17,49,121/- along with interest and has also imposed equal penalty under Rule 15(2) of Cenvat Credit Rules 2004 (CCR) read with Section 11AC.

2. The brief fact of the case is that the Department noticed that appellant had availed credit of service tax on certain taxable services received for exclusive use in their captive power plant. These services were Commissioning & Erection, Engineering services, Professional Consultancy services, Repairing & re-shelling, Freight charges, Cable Laying, Supervision, Servicing, Testing, Vulcanizing, Fabrication, Inspection etc. The Department felt that since the electricity (electrical energy) is an excisable good covered under Tariff Heading 2716 0000 of Schedule to Central Excise Tariff Act 1985 and therefore no central excise duty is being payable, the same is to be treated as exempted goods. Hence, manufacture and clearance of electricity by a manufacture using input or input service shall attract provisions of Rule 6 of Cenvat Credit Rules (CCR) in the given factual position. Department demanded recovery of certain credit taken improperly in terms of Rule 6(3).

3. In the course of adjudication, the main argument of the appellant was that the power generated in such power plant is being utilised partly in the sugar manufacture captively and only surplus power is being sold out to the grid. It was also pointed out that the final products are only sugar and molasses which are excisable goods and they are discharging duty thereupon. Therefore, the credit of said input services can be taken as the power plant generating electricity is essential for manufacture of dutiable sugar and molasses. They also submitted that the presumption that all the inputs were being used only for power plant is also not factually correct in as much as apart from power plant they have also used said input service for boiler also, which is an integral part of the manufacturing plant. They also submitted that the assumption that the electricity is an exempted product is not correct since electricity is not exempted in terms of any notification

issued under Section 5A of Central Excise Act 1944. The Adjudicating Authority, however, examined various contentions and submissions and, inter alia, held that power plant cannot be by any stretch of imagination considered as an integral part of the plant nor electricity can be considered as intermediate product for manufacture of sugar or molasses and accordingly even though the electricity is being partly used captively also for manufacturing of sugar, it cannot mean that electricity is an essential input for manufacture of sugar. He emphasised the fact that in the scheme of Value Added Tax, under CCR there is a provision for taking credit in respect of "inputs" used for generation of electricity, but there is no such provision for "input service". He also held that electricity, even if it is held to be a non-excisable commodity, then also there is no scope to avail Cenvat Credit on inputs or input services utilised in the manufacture of electricity as the scheme of Cenvat only extends to manufacture of excisable goods and not to non-excisable goods. In this regard, he analysed the provisions under Rule 2(a)(k)(iii) of CCR and, inter alia, held that only the "input" used for generation of electricity and that too for captive use, is eligible as also held by the Hon'ble Supreme Court in the case of CCE Vs Solaris Chemtech Ltd., [2007 (214) ELT 481 (SC)]. It was also observed by him that as per the provisions of CCR credit in respect of inputs or input service used in manufacture of only excisable product can be taken, however, by a legal fiction created under the definition of input, the credit of duty paid on goods used in production of electricity for captive consumption alone has been permitted.

4. Learned Advocate for the appellant has mainly contested that the input services availed by them during the relevant period were in relation to

various activities namely (a) service availed for sugar division expansion (b) services availed for fabrication, erection of co-generation of plant (c) services of erection and commissioning of boilers for use in sugar plant, as per details, as under:

Sl. No.	Details of input services	Credit availed (Rs.)
1	Services availed for sugar division expansion	26,02,738
2	Services availed for fabrication, erection etc., of co-generation of Plant and Machinery	55,54,596
3	Services of erection and commission of Boilers for use in sugar plant	35,91,788

He further submitted that credit was taken in respect of input services in relation to setting up of the co-generation power plant which is part of the sugar manufacturing unit and therefore Rule 6 of CCR cannot be invoked for reversal of credit since electricity is not an excisable goods. His further argument is that the appellant was entitled to avail credit of service tax paid on input services used for setting up and modernization of plant as per the inclusive definition of the input service and that said input services were not used merely for manufacturing of electricity but also for setting up of the plant. He has also argued on the ground of limitation and also that there was no provision to impose penalty under Rule 15(2) CCR and Section 11AC of the Act for availment of credit on input service during the material time. His further submission is that Rule 6(1), as it existed during the relevant period, applies only where input services are used for manufacture of final products, whereas, the services in the present case were not used for manufacture of electricity but were used prior to commissioning of co-generation power plant for setting up of the plant. He has also submitted that "electricity" has been treated as non- excisable good and hence Rule 6 machinery relied upon

in show cause notice for demand itself fails, as held in the case of Gularia Chini Mills Vs UOI [2014 (34) STR 175 (All)], which has been further approved by the Hon'ble Supreme Court reported in [2015 (322) ELT 769 (SC)]. He also submitted that co-generation power plant is integrally connected with sugar manufacture, using bagasse as fuel, and has been held as part of the factory in the case of Principal CCE, Meerut Vs Triveni Engineering & Industries Ltd., [2019 (21) GSTL 16 (All)].

5. Learned AR reiterates the findings of the Original Authority.

6. The issue is to be decided in the present appeal is whether in terms of provisions under CCR specifically Rule 6, the appellants were entitled to take credit in respect of certain input services which have been alleges used for manufacture of electricity and therefore not eligible in terms of provisions of Rule 6 of CCR as electricity was a non-excisable/exempted good or otherwise. The Adjudicating Authority has mostly relied on the concept that Cenvat Credit is allowed for mitigating the cascading effect and therefore when there is no payment of duty on the final goods in terms of their being attractive either nil rate or exempted from payment of duty in terms of any exemption, then taking of credit itself is not permissable. The principle which regulates taking of credit by a service provider, who is taking credit covered in Rule 6 clearly provides that Cenvat Credit shall not be allowed, inter alia, of input service used in or in relation to manufacture of exempted goods. This is precisely the ground for invoking Rule 6 and demand in terms of Rule 6(3). In this case, therefore, the first question is whether the "electricity" is a manufactured good or excisable good and if so whether it is an exempted good or otherwise. In this regard, we find that the appellants have relied on the judgment of Gularia Chini Mills, supra. We have perused the judgment

and we find that the issue before the Hon'ble High Court was whether electrical energy generated from bagasse and sold to Andhra Pradesh Power Corporation is excisable or not. The Hon'ble High Court, inter alia, held that electricity is not excisable goods under Section 2(d) of the Act and hence Rule 6 of CCR is not applicable as held by Apex Court in the case of Solaris Chemtech Ltd. Relevant para is cited below:

> **32.** The definition of 'excisable goods' given in Section 2(d) means the goods, which are specified in the First or Second Schedule and which are subjected to duty of excise, can only be treated as excisable goods. A proposition has also been accepted by the Commissioner in its findings. A perusal of Section 2(d) of Central Excise Act shows that the excisable goods are only those goods which are subjected to duty of excise as specified in the First Schedule or Second Schedule of the Central Excise Tariff Act. Since Column of rate of duty is blank, therefore, in view of Section 2 of the Central Excise Tariff Act, 1985, electrical energy is not being subjected to excise duty for the purposes of being excisable goods under Section 2(d) of the Central Excise Act. Furthermore, Rule 6 of the 2004 Rules, which is applicable only to excisable goods, can alone be treated as exempted goods for the purposes of Rule 6(3) of 2004 Rules, does not apply to electrical energy.

We also note that this order of Hon'ble High Court of Allahabad has been further affirmed by Hon'ble Supreme Court, as reported in [2015 (322) ELT 769 (SC)].

7. Therefore, in view of this judgment affirmed by Hon'ble Supreme Court, we find that the Rule 6 which has been invoked as the ground in the present appeal for recovery of erroneous credit taken by them cannot sustained as the electricity cannot be treated as exempted goods for the purpose of Rule 6. In other words, the very foundation for raising the demand is that the electricity is an excisable commodity and in an exempted good, this Rule 6 is applicable, will not survive in the light of the judgment of Hon'ble High Court of Allahabad in the case of Guleria Chini Mills, supra. Since, on this ground itself, the impugned order cannot sustain, we have not examined other arguments advanced by the appellant including the fact that said input services have been used not only for setting up of the plant for the

generation of electricity but also for moderanization/setting up the main sugar manufacturing plant i.e. boiler or that electricity is an exempted goods used in manufacturing of sugar and molasses etc. We have also not examined the issue of limitation or imposition of penalty, as on merit itself the demand is not sustainable. In view of the same, the impugned order is set aside.

8. Appeal allowed.

(Pronounced in the open court on 08.05.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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