

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 11510 of 2013

[OIA-95-100-2013-RAJ-CE-AK-COMMR-A-AHD dated 28/02/2013 passed by
Commissioner of Central Excise-RAJKOT]

Deep Recycling Industries

.....Appellant

Plot No. 773,
Gidc, Phase-Ii, Dared,
Jamnagar
Gujarat

VERSUS

C.C.E. & S.T.-Rajkot

.....Respondent

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,
Gujarat-360001

WITH

CUSTOMS Appeal No. 11511 of 2013

[OIA-101-104/2013/RAJ/CE/AK/COMMR-A/AHD dated 28/02/2013 passed by Commissioner of
Central Excise-RAJKOT]

D & G Metal Inc

.....Appellant

Plot No. 109/110,
Gidc, Phase-Ii, Dared,
JAMNAGAR,
GUJARAT

VERSUS

C.C.E. & S.T.-Rajkot

.....Respondent

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,
Gujarat-360001

AND

CUSTOMS Appeal No. 12038 of 2013

[OIA-167/2013/RAJ/CE/AK/COMMR-A/AHD dated 04/04/2013 passed by Commissioner of
Central Excise, CUSTOMS (Adjudication)-RAJKOT]

Western Impex

.....Appellant

Plot No. 11, Survey No. 221,
Village : Lakhabavad,
Jamnagar
Gujarat

VERSUS

C.C.E. & S.T.-Rajkot

.....Respondent

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,
Gujarat-360001

APPEARANCE:

Shri Manish Jain, Advocate for the Appellant
 Shri. Sanjay Kumar, & Smt. Bina D Jani, Superintendent (Authorized Representative) for the Respondent

**CORAM: HON'BLE MEMBER (TECHNICAL), RAJU
 HON'BLE MEMBER (JUDICIAL), SOMESH ARORA**

FINAL ORDER NO. A / 11659-11661 / 2023

DATE OF HEARING: 28.04.2023

DATE OF DECISION: 04.08.2023

RAJU

These appeals have been filed by M/s. Deep recycling, D & G Metal Inc & Western Impex.

2. The dispute is, if the appellants have imported and used the brass scrap correctly in terms of the provision of Notification No. 52/2003-Cus, read with the provisions of import-export and the SION Norms.

3. The order in case of Deep Recycling Industries is reproduced below:

"6. I have carefully gone through the appeal memorandum, impugned order, written as well as oral submission made by the appellant during the proceedings of personal hearing.

The issues to be decided in the present cluster of appeal are

(i) Whether, the appellant have properly followed the input-output ratio as per the statutorily prescribed norms of wastage, for the manufacturing of final goods, in terms and conditions of the aforesaid Notification No. 52/2003-CUS, or not;

(ii) Whether, the clearance of brass scrap classified under the CTH, other than the CTH of import by the appellant was proper or otherwise.

(iii) Whether, any manufacturing activity was carried out by way of segregation of the scrap, inasmuch as the adjudicating authority has held that since, the activity of segregation does not amount to manufacture as per the Export Import policy, no manufacturing was carried out and likewise the classification and value of the goods cleared in the DTA considering as wastage, was required to be considered as declared while importing.

(iv) Peripheral issue on the anvil, in case of one of the appeal (No. V2/334/RAJ/2012) to be decided is also as to whether, the duty on slag generated in excess of 2% of the input quantity is to be recovered or otherwise along with the legal status of the imposition of interest and penalty is to be verified.

7. Before embarking upon to decide the present set of appeals, it would not be out of place to state that I would like to deal with the issues involved in the present appeals in more in-depth, meticulous and scrupulous manner as, I find that there are umpteen numbers issues/ appeals on the similar lines, involving the whopping amount of duty! revenue, running in to crores and crores of rupees. I must also make it clear over here that though the quasi-judicial decision making is not at all guided by the quantum of amount involved or number of appeals on the identical issue, all the same it would not be exaggeration to say that such the situation calls for more perspicacious handling of situation, as it has got a series of chain reaction and the domino effect on the other cases, yet to be finalised.

7.2 Now, as elaborated hereinabove, there are, precisely speaking, three different tributaries to the main issue. However, when looked into from the broad perspective, all the issues would converge and it boils down to the single issue, as to whether the appellant, holding 100% EOU status, has properly availed the benefit of the exemption Notification No. 52/2003-Cus supra by showing wastage, which permitted the duty free importation of brass scrap, in legal and proper manner, or not, in the backdrop of circumstances, where the department have taken exception or objected to the fact of higher proportion of the wastage of scrap shown to be generated during the utilisation, which was well beyond the permissible limit of 2%, as laid down under the said Notification, and therefore, customs duty has been confirmed and other corollary actions have been taken and confirmed against such excessive wastage shown in unduly high proportion, as delineated above and as will be dealt with hereunder.

7.3 On the other hand, the appellant have contested that the wastage norms have been fixed by the Norms Committee, which are in two stages, i.e. (i) wastage arising during the course of segregation, and (i) the wastage arising during the course of manufacture of the brass product. The appellant thus, contended that the wastages shown by them were all well within the stipulated limit prescribed by the norms committee and therefore, there is no case for charging customs duty or ordering confiscation. The appellant has also contended that the process of segregation carried out by them is one of the many processes leading to the manufacture of the finished goods and therefore, classifying the same under the main brass scrap heading for the purpose of charging duty and valuation, is incorrect.

8. Now, briefly understanding the nitty-gritty of the import of the brass scrap and its procedure by 100 % EOU units, I find that the brass scrap is imported by the various manufacturers/importers of the brass parts hailing from in and around Jamnagar, at the port of import. At the port of import,

the container imported by 100 % EOUS laden with the brass scrap is superficially examined and from their under proper seal, it is transported to the factory premises of the appellant holding. 100 % EOU unit, which is virtually a sort of warehouse, allowing duty free storage of inputs for manufacture of the goods, which are to be eventually exported or dealt with as per the provisions applicable to 100% EOUS, as laid down under the said Notification, as also as per the Foreign Trade Policy. At warehouse/EOU, imported scrap is unloaded in the presence of the party or the assessee (appellant) concerned, who imported such scrap, as well as the jurisdictional Central Excise officers, who examines the same. After being the goods being unloaded from the container in the factory premises of EOU, the report in respect of the goods imported, as declared in the Bill of Entry, is being sent by the jurisdictional Central Excise authority who examined the goods, to the port of import.

9. *Now, coming to the mechanism and operational part, as to how the wastage generated in respect of duty free imported brass scrap has to be dealt with, the provisions of Notification No. 52/2003-Cus has to be referred to. The Notification No. 60/2008-Cus dated 05.05.2008 has amended the aforesaid nodal Notification No. 52/2003-Cus which reads as under:-*

"Export Oriented Units-Exemption-Amendment to Notification No. 52/2003-Cus.

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (32 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 52/2003-Customs, dated the 31st March, 2003, published in the Gazette of India Extraordinary, Part II, section 3, sub-section (1) vide number G.S.R. 274 (E), dated the 31st March, 2003, namely:

In the said notification,-

In the condition (3) of opening paragraph, in sub-condition (i) (d), in clouse (1), after sub-clause (ii), for the proviso, the following proviso shall be substituted, namely:

"Provided that-

(a) where no SION have been notified, the generation of waste, scrap and remnants upto 2% of input quantity shall be allowed;

(b) where additional items, other than those given in SION are required as input or where generation of waste, scrap and remnants is beyond 2% of the input quantity, use of such goods shall be allowed on the basis of self-declared ad hoc norms till such norms are fixed on ad hoc

basis by the jurisdictional Development Commissioner within a period of three months from the date of self declared norms and the unit shall undertake to adjust the self-declared/ad hoc norms in accordance with norms **as finally fixed by the Norms Committee for the unit.** The ad hoc norms will continue till such time the final norms are fixed by the Norms Committee;

(c) in case of utilization of a large number of inputs, wide variation in quantum of consumption of inputs or such other factors which render such fixation of SION difficult in the case of a particular unit, the Norms Committee may refer the case to the Board of Approval for a decision.":

in the paragraph 4, after the second proviso, in the clause (u) (a), for the words "such clearance or debonding of capital goods may be allowed on payment of duty on the depreciated value thereof and at the rate in force on the date of debonding or clearance. as the case may be", the following shall be substituted, namely:-

"such clearance or debonding of capital goods may be allowed on payment of duty on the depreciated value thereof and at the rate in force on the date of debonding or clearance, as the case may be, if the unit has fulfilled the positive NFE criteria taking into consideration the depreciation allowable on the capital goods at the time of clearance or debonding. In case of failure to achieve the said positive NFE, the depreciation shall be allowed on the value of capital goods in the same proportion as the achieved portion of NFE":

after paragraph 13, in the (iii) Explanation, after serial number (xiii) and entry relating thereto, the following serial number and entry shall be inserted, namely:-

"(xiv) "Norms Committee" means the Norms Committee in the Directorate General of Foreign Trade for recommending Input Output norms and value addition norms to be notified by the Director General of Foreign Trade "

So, what one can gather from thoughtful reading of the above notification, is that where no SION norms are/were fixed, generation of waste, scrap and remnant upto 2% is allowable and no customs duty is chargeable upto that extent, if the goods are imported by 100% EOU. However, when the wastage are more than 2%, the concerned unit has to get the Norms fixed by the Norms Committee, as per the said notification and Foreign Trade Policy and such norms of wastage fixed by the statutory Norms Committee has to be strictly adhered to. There is no two opinions about it. This is what the primary contention of the appellant that since, the wastage norms have been eventually fixed by the Norms committee in a statutory manner, there is no reason for the lower adjudicating authority to have gainsaid the benefit of the same and confirmed the demand, ignoring such norms, in respect of brass wastage beyond 2%.

10. On-going through the documents available on record, I find that the appellant, being a 100% EOU, was engaged in manufacturing and export of various Brass parts. In this regard, the appellant, purportedly were having the Letter of Permission (LOP) dated 17.01.2003 issued by the KSEZ, Gandhidham. Annexure- A, describing the manufacturing process adopted by the appellant was also attached to the said LOP wherein, the segregation of the non-ferrous scarp i.e. foundry scrap, was described as an initial stage towards manufacturing process. I also observe that the Development Commissioner, KSEZ vide various permission letters allowed the appellant to clear the specific quantity of waste/ remnants i.e. Iron/ MS Scrap, Rubber Scrap, Dust Waste and Slag, generated in connection with the production, into DTA on payment of full duty in terms of para 6.8(e) and 6.8(g) of FTP 2004-2009.

10.2 Accordingly, to decide the issue of input-output norms of the items manufactured by the appellant, by utilising the brass scrap, it would be worthwhile to have a look at the wastage norms fixed by the Norms Committee in terms para 6.8(e) of the FTP 2009- 14. which was intimated by DGFT, New Delhi, vide letter F. No. 01/81/162/313/AM 10/DES-11/254 dated 04.05.2011 to the Development Commissioner, KSEZ, Gandhidham, and provisions of the said Notification No. 52/2003-Cus, as amended, in respect of the appellant i.e. M/s Deep Recycling Industries, Jamnagar.

10.3 I find that the Norms Committee, while fixing the wastage norms in two stages of manufacturing had observed that:

"Dated: 04.05.2011.

To

The Development Commissioner,
Office of the Development Commissioner,
Kandla Special Economic Zone (KSEZ),
Gandhidham-Kutch,
Pin-370320 (Gujarat).

Sub: Fixation of wastage norms in terms of Para 6.8(e) of Foreign Trade Policy, 2009-14 for the manufacture of brass items.

I am directed to refer to your letter No. dated.... on the above mentioned subject and to inform that based on the recommendations of a team of Norms Committee which visited EOUS, manufacturing brass items from mixed metal brass scrap in Jamnagar area, the following wastage norms are fixed in terms of Para 6.8 (e) of Foreign Trade Policy, 2008-14 for the manufacture of brass items by M/s.....

A. Wastage Norms during segregation: The input raw material namely mixed metal brass scrap is not normal brass scrap, as it contains brass scrap with high impurities like iron & steel, plastic/ rubber etc. The process of segregation for physical removal of

impurities from mixed brass scrap to produce segregated mixed brass scrap is first operation in the manufacturing process to manufacture brass items from mixed metal brass scrap. Wastage norms during the process of segregation would vary from consignment to consignment depending upon the percentage of impurities in the mixed metal brass scrap and for the process of segregation the following wastage norms are fixed:

Description (after segregation)	Quality	Description of import item	Quantity
Segregated/ Processed mixed brass scrap	1MT	Mixed metal brass scrap with impurities like iron & steel, plastic/rubber etc.	As per actual verified by Central Excise subject to a maximum of 1.50 MT.

B. Wastage Norms for the manufacture of brass items from segregated/processed mixed brass scrap:

For the next stages of manufacturing operations for the manufacture of brass items from segregated/processed mixed brass scrap following wastage norms are fixed:

Export Item		Input Item (after segregation)	
Description	Quantity	Description	Quantity
Brass/Ingots	1MT	Segregated/ processed mixed brass scrap	1.08MT
Brass/Rods/Solid Sections/Profiles	1MT	Segregated/ processed mixed brass scrap	1.10 MT
Machined articles/Components/parts/accessories/made out of brass rods/bars/solid sections/solid profiles.	1MT	Segregated/ processed mixed brass scrap	1.26 MT

*It is also clarified that the above wastage norms are applicable for the manufacture of brass items from mixed metal brass scrap with impurities like iron and steel, plastic/ rubber etc **and not applicable for the manufacture of brass items from normal brass scrap.***

Yours faithfully

Sd/-

(Raman Kumar)

Foreign Trade Development Officer,
For Director General of Foreign Trade,
New Delhi."

(Emphasis supplied)

So what can be perceived from the above extraction, is that wastage norms have been fixed for two stages, one at segregation stage and another for manufacture stage, by the statutory Norms Committee. Detailed findings in respect of the aforesaid letter fixing wastage norms are given at ensuing paras of this order. However, as may be seen from the above statistics of the wastage worked out by the Norms Committee, it can be seen that wastages upto whopping 33% has been granted at the first stage and from 7% to 25% (approx) has been granted at the second stage.

10.4 Furthermore, I observe that though the activity of segregation was NOT covered under the definition of "manufacture" w.e.f. 01.04.2002, as clarified under para 9 of Appendix 14-1-C titled "Sector Specific Requirements for EOU Units" of the FTP 2004- 09, and as held by the lower adjudicating authority in the impugned order, Hind that the said activity being essential for carrying out further manufacturing activities by the appellant, the same seems to have been relaxed and allowed by the Norms Committee, vide the aforesaid letter supra dated 04.05.2011, in terms of para 6.8(e) of the FTP 009-2009-14. I also observe that the Letter of Permission was granted to the appellant on 17.01.2003 i.e. after the amendment to FTP on 01.04.2002, wherein, the appellant had shown segregation of mixed brass metal scrap, as an initial stage of manufacturing process of the export products. Thus, it seems that even though the activity of segregation" was explicitly excluded from the definition of "manufacture" in the FTP, still the said activity being essential in nature towards manufacture of goods, appears to have been approved by the Development Commissioner, while approving the LOP. The various quantitative wastage permissions granted by the Development Commissioner towards clearance of waste/ remnants viz. Iron/MS scrap/ Rubber scarp/ Dust waste/ Slag, are also obliquely indicative of the fact that segregation activity should be considered as a part of overall manufacturing activities. The said factum also implicitly find support from the Norms Committee, as they have find it appropriate and fit to fix the wastage norms under the provisions of FTP, read with proviso to condition no. 3(d)(1) of the said notification, inspite of clear exclusion of the activity of segregation, as an activity of 'manufacture' w.e.f. 01.04.2002, as clarified under para 9 of Appendix 14-1-C titled "Sector Specific Requirement for EOU units" of Foreign Trade Policy 2004-09, thereby meaning, as contended by the appellant, in the first place, the norms for segregation of waste and manufacture therefrom, would not

have been fixed at all, if such activity was not permissible under Foreign Trade Policy. I do find substance in the above plea of the appellant and therefore, in principle, I allow such plea, however, that would subject to rigours of this order, as would be dealt with in the forthcoming paras hereunder.

10.5 I also find though wastage norms were fixed by the statutory Norms Committee on 04.05.2011, the same has been made applicable for the period covering Foreign Trade Policies 2004-09 and 2009-14, as confirmed and intimated by the Development Commissioner, KASEZ, Gandhidham, vide letter no. KASEZ/100%EOU/1/04/05-06/8706 dated 19.12.2012, to the Commissioner of Customs and Central Excise, Rajkot. Since, the period of dispute in present cluster of appeals is related to September-2009 to March-2011, the wastage norms applicable to the appellant, should be, per se, prima facie, within the limits, as fixed and prescribed by the Norms Committee.

I further find that the appellant, along with appeal memorandums, had also submitted the month-wise quantitative statement showing consumption of imported raw material, clean brass scarp obtained after segregation along with quantity of goods manufactured and quantity of scrap obtained, from which it is quite apparent that the Input-output ratio was, prima facie, well within the norms, as fixed by the Norms Committee. The appellant had also contended, while submitting the quantitative month- wise statement/s, that wastages were well within the prescribed limits, as specified by the Norms Committee, and therefore, the ratio of input-output norms followed by the appellant should be held to be acceptable and no demand in this regard, should be confirmed.

However, I find that there are multitudes of cases requiring such verifications of the data, and for this appellate office, it would not be possible to verify all the quantitative data and worksheets submitted by the appellant, in accurate and precise manner, owing to the frugal infrastructure and time constraint. In any case, the jurisdictional authority are well versed and well equipped and suitably placed to analyse such verification of data.

10.6 I accordingly decide the cases/ appeals in following terms and subject to following verifications:-

- (a) Entire issue hinges upon the applicability of the aforesaid letter dated 04.05.2011, whereunder the wastage norms have been fixed by the Norms Committee. At the last para of the said letter dated 04.05.2011, the Foreign Trade

Development Officer, New Delhi, has entered the caveat, which is quite conspicuous. The same states that, "It is also clarified that the above wastage norms are applicable for the manufacture of brass item from mixed brass scrap with impurities like iron and steel Plastic/rubber etc and not applicable for the manufacturer of brass items from normal brass scrap." In view of the above rider, I find that before effectuating the wastage norms as fixed by the Norms Committee, it is very much imperative to first decide whether, the goods imported by the appellant, i.e. brass scrap, is of ilk and nature, which contained impurities like iron and steel, plastic/rubber etc. To ascertain above vital facts, relevant bills of entry, import invoices, bill of lading etc. may be verified. And, if it is found that, the appellant had imported the Brass scrap, whose description is matching with the verdict given by the Norms Committee, then for such consignment imported container-wise, the benefit of the wastage, as per the Norms Committee should be allowed, or else, the actions confirmed by the lower adjudicating authority in the impugned order/s shall stand confirmed, along with its fallout, in form of various penal actions. Needless to state here the said norms would also not applicable to any item, other than brass scrap, as the norms has been fixed for 'brass scrap with impurities', only. So, I held that if the description given in the import documents matches with the description of brass given by the Norms Committees, the wastage norms laid down thereunder, should be permitted, and any demand of duty and other concomitant penal actions, will stand set aside, to the extent of matching with norms.

(b) Confirmation of the fact that, the appellant had consumed mixed metal brass scrap, containing impurities like iron and steel, plastic/rubber etc. only (emphasis supplied to 'only') and had not consumed 'normal brass scrap or honey scrap' (which is normally a pure brass scrap, as per ISRI), during the segregation/ manufacturing process of goods, on which the above referred input-output ratio has been calculated, shall be verified by calling for the container-wise necessary import documents. The appellant may also be asked to produce the documents of the overseas supplier of the brass scrap, like, Bill of Lading and Import Invoice to ascertain the exact composition nature of the brass scrap. As the norms fixed by the norms committee is only applicable to the consignment and the party who imported "Brass scrap containing impurities like iron and steel, plastic/ rubber etc.", carrying out such exercise by the jurisdictional authorities is of prime importance.

(c) *To reiterate for the sake of clarity, the verification of veracity of the data contained in the monthly quantitative statements submitted by the appellant, in the appeal memorandum, is required to be carried out by the jurisdictional Central Excise authorities, who after satisfying himself about the stage-wise consumption of 'brass scrap with impurities' and segregated/ processed mixed brass scarp and thereafter, usage of the same towards the manufactured goods, if found in order, allow the benefit.*

11. *On the second issue, I observe that the lower authority had held that the non-foundry scarp which was obtained after segregation was not utilised towards the intended purpose and was cleared 'as such' and thus, the very purpose of the said notification was defeated. In this context, I find that the Norms Committee had already allowed/ approved the usage/ consumption of 1.5 MT of mixed metal brass scarp with impurities like iron and steel, plastic/ rubber etc. for obtaining 1.0 MT of segregated/ processed mixed brass scarp, with impurities at the first stage of manufacturing. Thus, though the activity of segregation was not satisfying the definition of 'manufacture' in terms of Appendix 14-1-C of the FTP, but being an essential activity towards manufacturing of goods to be exported, the same has been allowed by the DGFT in terms of para 6.8(e) of the FTP. In this regard, I find that it is also not disputed that the segregated non- foundry scarp contains iron & steel and plastic/ rubber scarp, which were being cleared by the appellant on the basis of the various quantitative clearance permissions given by the Development Commissioner, KSEZ, Gandhidham. Therefore, in view of above, the averments of the lower adjudicating authority, is, in principle, not sustainable, as the same were generated within the permissible limits, and the clearance of the same is per se admissible under the various quantitative permissions given by the Development Commissioner, KSEZ, Gandhidham.*

In view of the above, the issue of the activity not amounting to manufacture, is in principle, held to be in favour of the appellant, in light of the discussion hereinabove, however the benefit of the said plea would only accrue to the appellant, only if they succeed to prove that the norm fixed by the Norms Committee, is applicable to the nature of brass scarp imported by them. And, in case of failure, the demand of duty and other consequential penal actions, for the wastage above 2%, which the lower adjudicating authority has already denied under the impugned order, would stand confirmed.

12. On the third issue, I find that it is fact that the segregated non foundry scrap consists of iron & steel and plastic/ rubber scarp, which was not used further in the course of manufacturing of export goods and was cleared under the respective Customs Tariff Headings of 7202 and 4017. As the segregation of non- foundry scarp obtained from 'mixed metal brass scrap with impurities' was allowed by the Norms Committee, Inspite of not satisfying the definition of 'manufacture', it would not be proper to uphold the views of the lower adjudicating authority to classify the same under the CTH of 7404 and demanding the customs duty forgone at the time of import on the basis, that the same had not undergone the activity of manufacturing activity. Therefore, I, in principle, hold that the individual classification adopted by the appellant at the time of clearance was appropriate. However, the benefit of this issue to the appellant, also hinges upon the main issue, for which they are in first place, required to satisfy and prove to the jurisdictional Central Excise authority, along with cogent documentary evidences, that they have imported and used the 'Brass scrap with impurities', of the type and ilk, for which the Norms Committee have fixed norms. However, if the appellant are eligible for the norms fixed by the Norms Committee, the appellant would be eligible for separate classification and valuation adopted thereof. And in case if they are not eligible of the benefit of wastage norms fixed by the Norms Committee, in that case the appellant would be eligible only upto 2% of the total wastages for the benefit of separate classification/valuation.

13. On the last issue of utilization of excess brass scrap by showing the same as the urning loss, I find that in the relevant SCN, it has been alleged that after allowing dmissible ratio of the input quantity as 'slag/ buming loss', the balance quantity of slag which has been cleared in contravention of the stipulated norms, is chargeable to duty and liable for confiscation. Thus, it is clearly indicative of the fact that the excess quantitative consumption norms were worked out on the basis of 'clearance', rather than on the basis of 'generation' during the manufacturing activity. I further find that at para 13.3 of the impugned order, the lower authority had given the reference of the relevant SCN and without giving any findings had held that 10.745 MT of excess brass scrap was utilized and shown as burning loss was not permissible, and therefore, the said quantity was held liable to confiscation under section 111(0) of the Act.

In this regard, I find that as the said quantity was worked out on the basis of clearance (as against 'generation basis'), the same could not be treated as a violation of the

provisions of the said notification, as it could have been generated during the extended span of period covering may be more than one months. Therefore, in view of above, I am of the view that, in principle, the demand of duty and order of confiscation on the excess quantity of 10.745 MT held by the lower authority is not sustainable, subject to verification of the month-wise statement/worksheet submitted by the appellant in the appeal memorandum, by the jurisdictional Central Excise Division, as ordered supra in this regard. However, if the appellant fails to prove this primary requirement of having imported 'brass scrap with impurities', which matched with the description given in the report of the Norms Committee, the benefit of the instant plea, would, in any case fizzle out, as then, the position would revert back to scenario when any excess wastages, over and above 2%, as held liable to duty implication in the impugned order, would stand upheld.

14. *The appellant, had lastly also contended that the similar issue has been allowed by the Additional Commissioner, Central Excise, HQ, Rajkot qua the adjudicating authority, and the then Commissioner (Appeals), Central Excise, Rajkot, however, I find that the same are either passed by the lower adjudicating authority or the parallel authority and I would not be bound under the canons of jurisprudence to deviate from the stand already taken by such authorities, if at all the same is different from this order. Furthermore, the reason for digressing, if at all, from such decisions is also amply palpable by way of my discussion and findings hereinabove, in this order.*

15. *Needless to state that since the demand of duty and confiscation has been subject to the verification. The same would not be imposable, in a situation if the appellant proves the jurisdictional authorities, about the applicability of the wastage norms fixed by the Norms Committee, to their cases. However, in case of failure to prove such fact, I see no reason to interfere with the actions proposed and confirmed in the impugned order germane to duty, interest, confiscation and penalties.*

16. *In view of above discussions and findings, I hold that the input-output norms in respect of the appellant, as fixed by the Noms Committee under the provisions of FTP, read together with the provisions of said notification, would be subject to the verification and directions given hereinabove in this order."*

From the above order, it is apparent that in principle on all the issues relief has been granted but the matter has been remanded for determination of the nature of scraps imported. Similar orders have been passed in other two cases. It is the view of the Commissioner that, in case the imported scrap is in the nature of "Honey Scrap" then there cannot be any waste coming out of the said scrap and the stage of segregation available in terms of the letter dated 04.05.2011 of the Foreign Trade Development Officer communicating the decision of norms committee cannot be applied.

4. Learned Counsel for the appellant has pointed out that the issue raised by the Commissioner (Appeals) in the impugned order has been clarified by the Circular 1029/17/2016-CX dated 10 May, 2016. He pointed out that the doubt raised by the Commissioner (Appeals) in the impugned order is for verification of the nature of scrap. He pointed out that the Commissioner is not sure if the brass scrap imported by the appellant contains iron, steel, rubber, plastic etc., or not. He is essentially seeking confirmation if the import is covered by the description "brass scrap with impurities". The Commissioner (Appeals) has held that the normal brass scrap or "honey" scrap is pure brass scrap. The implication being that if what has been imported is normally brass scrap or honey scrap then no wastages in the nature of iron, steel or rubber or plastic etc., could arise.

4.1 Learned Counsel pointed out that even the SCN clearly states that various kinds of rubber and iron steel waste has been recovered during the process of segregation. He further pointed out that the circular dated 10.05.2016 and para 3-4 observed as follows:

"3. The issue has been examined. Segregation from honey grade brass scrap in order to weed out other foreign materials before the process of melting in the furnace is an essential process relating to manufacture of brass articles. The foreign materials, emerging during the process of segregation have to be treated as process waste and cannot be treated like removal

of inputs as such. The segregated foreign material has an altogether different character and use vis-à-vis brass scrap. Accordingly, clearance of foreign material such as iron, steel, rubber, plastic, dust etc. cannot be treated as clearance of inputs as such. It may be noted that Circular No. 62/2001-Cus., dated 12-11-2001 (2001 (134) ELT (T39)] does not apply to the issue at hand as the facts at hand are different."

4. In view of above, it is clarified that the clearance of segregated foreign materials namely iron, steel, rubber, plastic, dust etc, from honey grade brass scrap before feeding in the furnace cannot be treated as removal of "input as such" as envisaged under Rule 3(5) of CENVAT Credit Rules, 2004. The segregated foreign material in such situation, as has been explained above, shall be cleared on payment of Central Excise duty on transaction value as per its appropriate classification and rate of duty determined on merits."

4.2 He pointed out that in para 4 of the aforesaid circular, clearly recognizes that removal of foreign materials namely iron, steel, rubber, plastic etc., from "honey grade brass scrap" would not fall under rule 3(5) of CCR, 2004. He pointed out that it is apparent from the circular that even the department recognizes that honey scrap is also brass scrap with impurities.

5. Learned AR relied on the impugned order.

6. We have considered rival submissions. As can be seen from the order of Commissioner (Appeals) reproduced above, he has in principle allowed the benefit on all the issues however remanded the matter for verification of the fact, if the brass scrap imported by the appellants was in the nature of brass scrap containing impurities like iron, steel, rubber, plastic, etc., or not. He is of the opinion that benefit of segregation can be allowed only if the imported scrap contained impurities like iron, rubber, plastic, steel etc. *Prima facie* from the clarification dated 10.05.2016 reproduced above, it is seen that even the revenue is of the belief that "honey grade" scrap also contains iron, steel ,etc., as impurities. It is seen that this circular dated 10.05.2016 was not produced before the original or first appellate authority and consequently there is no

examination of this circular. It is seen that the circular has been issued after the date of passing of the impugned order.

8. In these circumstances, we deem it right that the impugned order is modified. The original Adjudicating Authority will examine the applicability of this circular dated 10.05.2016, and any other circular issued on the subject to the remand directions given in the impugned order and decide the issue afresh. While doing so it shall be free to decide the nature of product imported by documentary evidence or otherwise on the basis of materials already on record.

(Pronounced in the open Court on 04.08.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PALAK