

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

REGIONAL BENCH - COURT NO. 3

CUSTOM Appeal No. 13282 of 2013-DB

[Arising Out Of OIO-RJT-EXCUS-000-APP-300-13-14 Dated 21/06/2013 Passed By
Commissioner of Customs –Jamnagar (Prev)]

Amardeep Exports

Plot No. 414 & 417, Gidc,
Phase-II, Dared,
JAMNAGAR
GUJARAT

.... Appellant

VERSUS

C.C.-Jamnagar(prev)

Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar, Gujarat

...Respondent

WITH

- i. Custom Appeal No. 13283 of 2013 (Amardeep Exports)**
- ii. Custom Appeal No. 13284 of 2013 (Amardeep Exports)**
- iii. Custom Appeal No. 13613 of 2013 (Amardeep Exports)**
- iv. Excise Appeal No. 11294 of 2014 (Amardeep Exports)**
- v. Excise Appeal No. 11295 of 2014 (Amardeep Exports)**

APPEARANCE :

Shri R Subramanya, Advocate for the Appellant

Shri Anoop Kumar Mudvel, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

FINAL ORDER NO. 10267-10272/2024

DATE OF HEARING : 16.10.2023

DATE OF DECISION :30.01.2024

RAJU

These appeals have been filed by M/s. Amardip Exports and Ors. against the demand of Custom Duty, interest, imposition of penalty and confiscation of imported material and imposition of redemption fine.

2. Learned counsel for the appellant pointed out that the appellants were importing mix Brass scarp for manufacture for their final products in terms of

Notification 52/2003 –CUSTOM dated 31.03.2003. The imported mix Brass scrap was first subjected to segregation and as a result non foundry scrap and foundry scrap were obtained. Non foundry scrap was cleared by the appellant as such on payment of appropriate duties. In respect of Non foundry scrap demand was raised by classifying the goods under heads 74040022. The foundry scrap was utilized in the manufacture of finish goods went for export. The dispute in the instant case is if the appellant has utilized raw material in excess of that prescribed – in the input/ output norms. It was alleged that appellants have utilized has excess imported raw material for the purpose as compare to the quantity eligible for manufacture of the finished goods. He placed reliance on the following Board Circular and Judgments:-

- 2019(368) ELT (GUJ)-CC (Prev) Vs Monarch Overseas & Others
- 2019(1)TMI 925 Gujarat High Court- CC (Prev) Vs Pooja Metal Ltd
- Final Order No. A/11068-11093/2018-Hon'ble Cestat, Ahmedabad
- Circular No. 1029/17/2016 dated 10.05.2016

3. Learned AR relies on the impugned order.

4. We have considered the rival submissions. We find that there are 4 customs and 2 excise appeals.

In the Appeal No. E/11294-11295/2014-DB the Commissioner appeal has held that the non -foundry scrap is not classifiable under Custom Tariff header, 7404 0022 and therefore, the demand of duty and order of confiscation of non-foundry scrap cannot be upheld.

The Commissioner (Appeal) has however, also observed as follows.

“However, before implementing the decision it would require to be seen as to whether the said quantity of non-foundry scrap was generated as per provision of Notification No. 52 /2003- Custom read with the final norms/ ratio fixed by the norms committee by the jurisdictional Excise Authority. However, if the appellants fails to prove that non foundry scrap was generated within the prescribed norms as per the said notification read with the final norms as fixed by the norms committee , as would be applicable depending upon a mix Brass scrap as discussed in para 14 infra there the duty implication in the order stand upheld.

These appeals are also against this specific restriction placed by the Commissioner Appeals in this impugned order.

4.1. It is noticed that the Adjudicating Authority confirmed an order classification of goods under heading No. 7404 0022 of Custom Tariff Act 1975. The show cause notice also sought to classify the said goods under Custom Tariff Act 7404 0022. In the circumstances we find that the order of the Commissioner Appeal seeking to confirm demand while simultaneously holding the goods not classifiable under heading No. 7404 0022 cannot be sustained. Moreover CBIC has classified as follows vide Circular No. 1029/17/2016 dated 10.05.2016.

"2. However, there is another category of waste viz. foreign materials segregated initially and not fed in furnace. The issue is when such segregated foreign material is cleared by the brass manufacturers, can it be treated as clearance of "inputs as such" and accordingly are manufacturers required to pay an amount equal to the credit availed in respect of such inputs in terms of Rule 3(5) of CENVAT Credit Rules, 2004.

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-a-vis brass scrap. Value per unit and classification of the segregated foreign material is also different from that of imported 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 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 "inputs 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.

5. Difficulty faced, if any, in implementing the circular should be brought to the notice of the Board. Hindi version will follow."

Thus even according to the CBIC the goods cannot be classified under chapter 74 as foundry scrap. The Appeals E/11294-11295/2014 –DB are therefore allowed.

5. In appeal Nos. C/13282-13284/2013 and C/13613/2013 the issue relates to determination of permissible input output ratio.

The benefit of Notification 52/2003-Custom is subject to the following conditions, namely:-

(1) The importer has been authorized by the Development Commissioner, to establish the unit for the purposes (specified in clauses (a) to (e) of the opening paragraph of this notification;

2) The unit carries out the manufacture, production, packaging or job-work or service in Customs bond and subject to such other condition as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs or Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, (hereinafter referred as the said officer) in this behalf;

(3) The unit executes a bond in such form and for such sum and with such authority, as may be specified by the said officer, binding himself, -

(a) to bring the said goods into the unit or and use them for the specified purpose mentioned in clauses (a) to (e) in the opening paragraph of this notification;

(b) to maintain proper account of the receipt, storage and utilization of the goods;

(c) to dispose of the goods or services, the articles produced, manufactured, processed and packaged in the unit, or the waste, scrap and remnants arising out of such production, manufacture, processing or packaging in the manner as provided in the 2[Foreign Trade Policy] and in this notification;

(d) to pay on demand -

(1) an amount equal to duty leviable on the goods and interest at a rate as specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue) issued under section 28AB of the said Customs Act on the said duty from the date of duty free import of the said goods till the date of payment of such duty, if-

(i) in the case of capital goods, such goods are not proved to the satisfaction of the said officer to have been installed or otherwise used within the unit, within a period of one year from the date of import or procurement thereof or within such extended period not exceeding five

years as the said officer may, on being satisfied that there is sufficient cause for not using them as above within the said period, allow;

(ii) in the case of goods other than capital goods, such goods as are not proved to the satisfaction of the said officer to have been used in connection with the production or packaging of goods in accordance with SION for export out of India or cleared for home consumption within a period of three years from the date of import or procurement thereof or within such extended period as the said officer may, on being satisfied that there is sufficient cause for not using them as above within the said period, allow:

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 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];

(iii) in the case of, -

(a) goods produced or packaged, such goods have not been exported out of India, and

(b) unused goods (including empty cones, bobbins or containers, if any, suitable for repeated use) as have not been exported or cleared for home consumption, within a period of one year from the date of import or procurement of such goods or within such extended period as the said officer, as the case may be, on being satisfied that there is sufficient cause for not using them as above within the said period, allow;

(II) in case of failure to achieve the said positive Net Foreign Exchange Earning, the duty equal in amount to the portion of the duty leviable on the said goods but for the exemption contained in this notification and the duty so payable shall bear the same proportion as the unachieved portion of Net Foreign Exchange Earning bears to the positive Net Foreign Exchange Earning to be achieved along with interest at the rate as specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue) issued under section 28AB of the said Customs Act, on the said duty to be paid on demand from the date of importation or procurement the said goods till the payment of such duty.

6. In terms of clause 3 (d) (ii) is required to establish to the satisfaction of the officer that the goods used in production or packaging of finished goods are in accordance with the SION for export out of India.

In the case of appellant themselves vide order F No. 01/81/162/313/AM - 10/DES-II/219 dated 04.05.2011 wastage norms are determined in terms of para 6.8 (e) of the Foreign Trade Policy, 2009-2014, as follows.

*“ I am directed to refer to your letter No.KAZEZ/100%EOU/I/04/2005-06 dated 14.07.2009,13.08.2009 &8.9.2009 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 2009-14 for the manufacture of brass items by **M/s Amardeep Export, Jamnagar**.*

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 form mixed metal 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)	Quantity	Description of Import Item	Quantity
Segregated/processed Mixed brass scrap	1 MT	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	
Description	Quantity	Description	Quantity
Machined articles components parts accessories made out of brass rods bars solid sections solid profiles	1 MT	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 & Steel, Plastic/rubber etc and not applicable for the manufacture of brass items from normal brass scrap.”

7. It is seen from the order-in-original that the Additional Commissioner has given following calculation for the purpose of ascertaining the quantity required for manufacture of goods actually produced by the appellant.

Annexure- B and Annexure B-1				
Calculation as per final norms for segregation of raw material and non-foundry/ foundry scrap obtained during segregation AND finished goods manufactured from the foundry scrap/ cleaned brass scrap during the period 01.02.2009 to 31.03.2010				
		Submitted at time of issue of SCN	Submitted at the time of verification	
S.No.	Details	Qty. In MT	Qty. In MT (Revised)	
1.	Opening stock of R.M.(Mixed brass scrap) as on 1.02.2009	100.964	83.889	
2.	Total R.M. procured duty free (From 1.02.2009 to 31.03.2010)	215.920	215.920	
3.	Total (1+2)	316.884	299.909	
4.	Closing stock as on 31.03.2010.	6.679	1.294	
5.	Total R.M. consumed (3-4)	310.205	298.615	
6.	Finished goods manufactured / Non-foundry scrap generated	127.872	226.201(Foundry scrap segregated)	
			72.414 (Non foundry scrap segregated)	
7.	Input/out put norms	1 : 1.10 kg	1 : 1.50kg (at 1st stage)	
8.	Raw material permissible as per final norms	140.659	339.302	
9.	Excess of R.M. consumed	169.546	0.00 MT	
IInd stage Calculation : (Annexure-B-1)				
	Opening stock of cleaned brass scrap/ foundry scrap as on 1.02.2009		16.975	
	Received cleaned brass scrap		226.201	
	Total		243.176	
	Closing stock as on 31.03.2010		5.385	
	Brass scrap consumed for manufacturing of finished brass parts		237.791	
	Finished goods manufactured		127.872	
	Maximum input quantity available at 2 nd stage, as per Wastage norms 1: 1.26 MT(Brass parts)		161.119	
	Excess quantity of cleaned brass scrap used		76.672	

From the above table it is noticed that the Additional Commissioner has given the benefit of the wasted as prescribed in the letter of Ministry of Commerce and Industry DGFT dated 04.05.2011 prescribe in wastage norms. Row 1 to 9 of the above table calculate the norm at the stage of segregation of non-foundry scrap from foundry scrap. The Annexure -B1 appearing after row 9 of the above table calculates the amount of segregated foundry scrap needed for manufacture of finished goods actually manufactured by the appellant. It is apparent that the said calculation is in accordance with the norms prescribed vide letter dated 04.05.2011. It is seen that by applying those norms the demand has been revised from Rs. 43,69,813/- to Rs. 19,76,115/-.

8. The appellant in the appeal papers have argued that the correct method of calculating excess consumption would be as follows.

“The appellants again reproduce the calculation. As per the new norms the ratio of 'segregated brass scrap' from 'mixed brass scrap' is fixed as 1MT: 1.50 MT and the ratio for finished goods and Segregated brass scrap, for brass components/articles/bars etc. the same has been fixed as 1 MT: 1.26 MT. **(Exhibit-25). Taking this ratio the calculation for finished product is as under;**

-1.50 MT of 'mix brass scrap' is for 1 MT of 'segregated brass scrap';

-Therefore out of 298.615 MT of raw material consumed i.e. 'mix brass scrap' the quantity of 'segregated brass scrap' would be manufactured is $-298.615/1.50=199.076$ MT

-Therefore permissible quantity of 'non-foundry' material is - $298.615-199.076=99.539$ **MT.**

Now out of 1.26 MT of 'segregated brass scrap' 1 MT of finished product can be manufactured

-therefore out of 199.076 MT of 'segregated brass scrap' the quantity of finished product to be manufactured is $= 199.076/1.26 = 157.997$ MT But the actual quantity of finished goods i.e. brass parts manufactured = 127.872 MT **(Annexure-C to the SCN).**

127.872 MT of Brass parts manufactured and therefore quantity of processed brass scrap required is $127.872^{\wedge} * 1.06 = 161.118$ MT . and therefore quantity of raw material required $s=161.118^{\wedge} * 1.5 = 241.677$ **MT.**

Now quantity of raw material consumed in generation of slag, a by product as per the LOP, is required to be added-

Quantity of slag generated during the period is (11.475MT + closing balance as on 31.03.10 MT + 24.350MT quantity destroyed-35.826MT minus 7.327 MT = 28.498 MT. **(Exhibit-24)**

Therefore quantity of raw material consumed, taking 2% of permissible limit (since no norms fixed for slag) the quantity of raw material required = 102% of 28.498 MT= **29.067 MT.**

-Therefore total permissible quantity of raw material comes to= $(241.677+29.067)= 270.744$ MT whereas the quantity of raw material consumed was 298.615 MT (Annexure B to the SCN). Thus excess quantity of raw material consumed could be said to be $298.615-270.744 = 27.871$ **MT. Therefore, alternatively the demand should be restricted to 27.871 MT of raw material only, involving duty amount to Rs. 7,18,337/-only.**

8.1. It is seen from the above calculation presented by the appellant that they have taken of fixed ratio of 1.5 for the purpose of calculating ratio at the time of

segregation of processed mix brass scrap. It is seen that the letter of DGFT dated 04.05.2011 does not give permission to avail benefit of the ratio of 1.5 but the language is as follows:-

“as per the actual verified by the Central Excise Officer **subject to maximum of 1.5 MT.**”

From the table above it is seen that the Additional Commissioner in the order-In-original has given the benefit of actual amount recovered on account of segregation. The calculation in the appeal is made by adoption of a fix ratio 1.5 which is not ratio of prescribed in DGFT letter. It cannot be accepted as the real ratio verified by the authorities is less than 1.5 and as per DGFT letter the ratio is a map of 1.5 but limited to the actual verified by Central Excise.

8.2. The second point raised by the appellant in their calculation relates to the loss on account of slag. From the letter DGFT dated 04.05.2011, it is apparent that the wastage norm for the stage of manufacturing brass items from segregated process mix brass scraped is 1.26 and is obviously inclusive of all kind of losses including slag. Thus, the calculation given by the appellant in their appeal cannot be adopted for the purpose of calculating unexplained consumption of scrap.

8.3. The Next argument raised by the appellant relates to the period of limitation. It is seen that the demand has been raised in terms of clause-3 of the Notification 52/2003-CUS. The said clause prescribes required the appellant to execute bond in terms of which they are required to explain actual consumption of raw material finished goods product and on failure to do so they are required to pay duty. It is seen that the demand has been raised not only invoking provisions of Section 28 but also Section 72 of the Customs Act. In terms B17 bond executed by the in terms of Notification 52/2003-Customs dated 31.03.2003. Therefore, since the demand has been raised invoking the condition of the bond the period of limitation would not be applicable to the instant case.

9. We find that all the customs appeals the facts are practicably identical. We do not find any merit in appeals filed by the appellant the same are dismissed.

(Pronounced in the open court on 30.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Arpita