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

REGIONAL BENCH – COURT NO. 03

EXCISE Appeal No. 11478 of 2013-DB

[Arising out of Order-in-Original/Appeal No 187-2013-RAJ-CE-AK-COMMR-A-AHD dated 26.04.2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT]

Mitesh Impex ...Appellant

Plot No. 287, 288, 289, 311 & 312,
Gidc, Phase-Ii, Dared,
JAMNAGAR
GUJARAT-361004

VERSUS

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

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

WITH

EXCISE Appeal No. 11479 of 2013-DB

[Arising out of Order-in-Original/Appeal No 186-2013-RAJ-CE-AK-COMMR-A-AHD dated 26.04.2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT]

Rajhans Impex Pvt Ltd ...Appellant

Plot No. 8,
Gidc, Phase-Ii, Dared,
Jamnagar
Gujarat-361004

VERSUS

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

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

APPEARANCE:
Shri P. V Sheth, Advocate for the Appellant
Shri. Prakash Kumar Singh, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO.A / 10224-10225 /2023

DATE OF HEARING:23.01.2023
DATE OF DECISION: 07.02.2023

RAMESH NAIR

The fact of the case is that the appellant herein are 100% export oriented unit and engaged in manufacture of Brass articles. During the relevant period the appellant had imported Brass Metal scrap containing other impurities without payment of duty under Notification 52/2003-cus dated 31.03.2003 as the said scrap, after receipt, segregated into foundry and non-foundry scrap. The foundry scrap is used in manufacturing of brass products. Whereas non foundry scraps containing other impurity was sold. The case of the department is that one the non foundry scrap cleared by the appellant is un manufactured goods and liable to custom duty on its clearance and on other after the allowance of 2% scrap over and above the 2% scrap is also liable to custom duty.

2. Shri Paresh V. Sheth, Learned Counsel appearing on behalf of the appellant at the outset submits that the very same issue has been considered by this Tribunal in the Bunch of cases vide A/11068-11093/2018 dated 09.02.2018, whereby both the issues have been decided in favour of the assesse. This order of the Tribunal was challenged by the revenue before the Hon'ble High Court of Gujarat. However, the revenue's appeal was dismissed by the High Court and the same was accepted by the department. He further submits that considering the above legal status of the case on the issue even in appellant's own case the jurisdictional Commissioner vide order No. RAJ-EXCUS-000-COM-14 to 20-18-19 dated 26.03.2019 dropped the proceeding. Accordingly, the issue is no longer *res integra*.

3. Shri Prakash Kumar Singh, Learned Superintendent (Authorized Representative), Shri Tara Prakash, Learned Deputy Commissioner

(Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the very same issue has been considered by this Tribunal in the case of Meridian Impex Vs. CCE. & S.T.- Rajkot vide Final Order No. A/11068-11093/2018 dated 09.02.2018, wherein the Tribunal has passed the following order:

> *"10. we find that as far as the question for determination, whether the activity of segregation of imported mixed brass scrap into foundry and non-foundry grade, amounts to manufacture or otherwise is concerned, itis now more or less covered by the recent Circular of Board dated 10/05/2016. The said Circular is a clarification on the issue of segregation of impurity, namely ,iron, steel, rubber, plastic, dust etc. from honey grade brass scrap imported, albeit in the context of Rule 3(5)of CENVAT credit rule 2004, but definitely applicable to the present case. It is clarified as follows:*
>
> > *"3. The issue has been Segregation from honey grade 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. 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 tothe 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 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 dutydetermined on merits."*

11.From the above clarification, it is clear that after segregation of themixed imported scrap, the segregated scrap, if cleared, cannot be considered as clearance of "inputs as such". In other words, the segregation activity is a part of manufacturing of brass articles from the imported mixed brass scrap, consequently, the demand of customs duty on the clearance of segregated non-foundry scrap in DTA, considering the same as that of imported scrap and clearance "as such", is unsustainable in law. The earlier clarification issued in the year 2001, in the context of import of plastic scrap may not relevant also, it is contraryto the principle of law laid down in relation to the meaning of "manufacture" by the judiciary in a series of cases. The Hon'ble SupremeCourt in the case of CCE Vs. Rajastan Chemical works 1991 (55) ELT 444(SC) observed as follows:

> ***"16.*** *A process is a manufacturing process when it brings out a complete transformation for the whole components so as to produce a commercially different article or a commodity. But, that process itself may consist of several processes which may or may not bring about any change at every intermediate stage. But the activities or the operations may be so integrally connected that the final result is the production of a commercially different article. Therefore, any activity or operation whichis the essential requirement and is so related to the further operations forthe end-result would also be a process in or in relation to manufacture to attract the relevant clause in the exemption notification. In our view, the word `process' in the context in which it appears in the aforesaid notification includes an operation or activity in relation to manufacture."*

12. Therefore, the process of segregation of imported mixed brass scrap, into foundry and non foundry grade by weeding out the impurities so as to prepare it or make it suitable to feed into the furnace for manufacture brass ingots, and then finished goods, in our view is a process integrally connected to the manufacture of brass articles. Besides, this Tribunal in the case of Singh scrap Processor Ltd. Vs, Commissioner of C.Ex. 2002 (143) ELT 619(Tri.-Mumbai) held the process of removal of impurity results into manufacture. Accordingly, the non-foundry scrap cleared in DTA on payment of excise duty, cannot be construed clearance of imported scrap 'as such'.

13.On the issue of payment of duty on the excess use/consumption scrap material, in the activity of segregation/manufacture of finished goods, then the norms fixed by the norms committee or mentioned in the Notification, as the case may be, we find that the Ld. Commissioner(Appeals), in his subsequent Orders, has *rightly referred toand relied upon clause (3) of the said Notification. For better appreciation the said clause is reproduced as below:*

> *"3. Notwithstanding anything contained in this notification, the exemption herewith shall also apply to goods which on importation into India or procurement, are used for the purpose of manufacture of finished goods or services and such finished goods and services, (including by-products, rejects, waste and scrap arising in the course of production, manufacture, processing or packaging of such goods) even if not exported, are allowed to be sold in DomesticTariff Area in accordance with the Foreign Trade Policy and subject to such other limitations and conditions as may be specified in this behalf by Development Commissioner, or the Board of Approval or the Inter Ministerial Standing Committee, as the case may be, on payment of appropriate duty of excise leviable thereon under section 3 of the Central Excise Act, 1944 (1 of 1944) or where such finished goods (including by-products, rejects, waste and scrap) or services are cleared to the warehouse appointed or registered undernotification of the Government of India in the Ministry of Finance (Department of Revenue) No. 26/98-Central Excise (NT), dated the 15th July, 1998 or No. 46/2001-Central Excise (NT), dated the 26thJune, 2001 or cleared to the warehouse authorized to carry out manufacturing process or other operation under section 65 of the Customs Act, 1962 (52 of 1962) and under the Manufacture and Other Operations in Warehouse Regulation, or cleared to the holdersof certificate from Apparel Export Promotion Council and Council for Leather Export for duty free imports as referred to in clause (e) of the paragraph 6.9 of the Foreign Trade Policy, without payment of duty :*

14. Interpreting the said provision, the Ld. Commissioner (Appeals) observed that even if the imported goods are used in the manufacture of the finished goods (including by products, rejects waste and scrap arising in the course of production, manufacturing processing or packaging of such goods) even if not exported, are allowed to be sold in DTA, in accordance with the Exim Policy on payment of appropriate excise duty leviable thereon, the exemption Notification No. 53/ 2003– Cus. dated 31/03/2003 cannot be denied. In the present case, the scrapgenerated during the course of segregation/manufacture of brass articleshad been permitted to be cleared in the DTA by the Development Commissioner and the Appellant-assessee had cleared the scrap pursuant to the said permission and discharged appropriate excise duty on its sale. Hence, demanding *customs duty foregone on the excess quantity of imported scrap worked out on the basis of the Norms fixed by the Committee, in our view, is not sustainable in law. We summarize our findings as follows;*

(i) The activity of Segregation of imported mixed brass scrap into foundry and non-foundry grade, results into manufacture, hence, the Revnue's Appeals on this count fails, accordingly, rejected.

(ii) The excess quantity of scrap generated during the activity of segregation/manufacture of the Brass articles cleared on payment of applicable excise duty in DTA as per the permission of

Development commissioner, is covered by clause(3) of the Exemption Notification 50/2003cus. Dt.31.3.2003, as amended, and the respective Orders of the ld. Commissioner(Appeals) which are passed on same line are upheld and the Orders contrary to above, are set aside and the Appeals filed by the respective, assesse-Appellants are allowed .

15. Appeals are disposed off as above.

The above decision has been upheld by the hon'ble Gujarat High Court by dismissing the revenue's appeal. Moreover, the department has accepted the Hon'ble Gujarat High Court order and subsequently dropped the proceedings in various cases on the same issue. Accordingly the issue is no longer *res integra*. Hence, the impugned orders are set aside appeals are allowed.

(Pronounced in the open Court on 07.02.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)