CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70731 of 2019

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APPL-388-19-20 dated 21/06/2019 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

Commissioner of Central Tax, GST &
Services Tax, Gautam Buddha Nagar **.....Appellant**
(C-56/42, Renu Tower, Section 62, Noida-201301)

VERSUS

M/s APL Apollo Tubes Ltd., **....Respondent**

(A-19, Industrial Area, Sikandarabad, Bulandshahar)

APPEARANCE:

Shri Sandeep Pandey, Authorised Representative for the Appellant
Shri Suyash Agarwal, Advocate for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70177/2024

DATE OF HEARING : 05 January, 2024
DATE OF DECISION : 05 January, 2024

P.K. CHOUDHARY:

The present appeal is filed by the Revenue assailing the Order-in-Appeal No.NOI-EXCUS-001-APPL-388-19-20 dated 21/06/2019 passed by the Commissioner (Appeals), Central Goods & Services Tax, Noida.

2. The facts of the case in brief are that the Respondent is engaged in manufacture of M.S. Black Pipes and Galvanised Iron Pipes / Tubes falling under Chapter 73 of the First Schedule to the Central Excise Tariff Act, 1985. During the manufacture of the excisable goods, unusable waste/residue is generated which is sold as zinc dross /cyclone/ash in the open market.

3. Vide Show Cause Notice[1] No.IV(9) Adj/APL/N-II/02/17 dated 16.3.2017 the demands were proposed against the Respondent alleging that during the period from March, 2015 to November, 2016, the Respondent was required to pay an amount equal to 6% of the value of zinc dross / zinc dust/ zinc lumps/zinc cyclone / zinc ash cleared in terms Rule 6(3) of the CENVAT Credit Rules, 2004[2] as these were allegedly exempted goods.

4. The said SCN was adjudicated vide the Order-in-Original No.29/ADC/GBN/2017-18 dated 02.02.2018 and demand of Rs.82,00,502/- was confirmed under Rule 14 of CENVAT Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944 along with interest and penalty of Rs.8,20,050/-, imposed under Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. Being Aggrieved, the Respondent filed appeal before the Commissioner (Appeals), who vide the impugned order dropped the demand and set aside the order of the Original Adjudicating Authority. Aggrieved by the said impugned order, Revenue have filed the present appeal before the Tribunal.

5. Heard both sides and perused the appeal records.

6. We find that the Respondent is a manufacturer of steel tubes and not of inevitable zinc dust/ash which comes into existence during the manufacture of the excisable goods i.e. tubes. Rule 6 of the C.C.R., 2004 is thus not applicable and issue involved has already been decided by various Benches of the Tribunal in Respondent's own case for the same period and there is no further appeal by the Department.

7.1 Chennai Bench of the Tribunal in Respondent's own case vide Final Order No.40925/2019 dated 12.07.2019, on exactly same issue for the period from March, 2015 to June 2017, after examining Explanation (1) introduced w.e.f. 01.03.2015 in Rule

[1] S.C.N.
[2] C.C.R., 2004

6, has allowed the appeal of the Respondent and set aside the demand under Rule 6 on Zinc scrap cleared by the Respondent.

7.2 Mumbai Bench of the Tribunal in Respondent's own case vide Final Order Nos.A/86087-86088/2022 dated 18.11.2022, on exactly same issue for the same period after examining Explanation (1) introduced w.e.f. 01.03.2015 in Rule 6 has allowed the appeal of the Respondent and set aside the demand under Rule 6 on Zinc scrap cleared by the Respondent.

7.3 This Bench of the Tribunal vide Final Order No.71521/2019 dated 09.08.2019 on identical facts allowed the appeal of sister concern of the Respondent.

7.4 Bangalore Bench of the Tribunal vide Final Order No.20621/2019 dated 6.8.2019 on identical facts allowed the appeal of subsidiary of the Respondent for the period 2016-17; holding that Rule 6 of the CCR, 2004 is not applicable to the waste products which arises during the process of manufacture and is sold for some consideration.

8. Further, in the present case, the goods in question have consistently been held to be non-excisable even after amendment in the definition of excisable goods contained in Section 2(d) of the Central Excise Act, 1944. Hence, the goods in question are neither "final product" nor "exempted goods". Thus, the provisions of Rule 6 of the C.C.R., 2004 are not attracted in the present case. Hence, the demand is liable to be set aside.

9. Further, in the case of Triveni Engineering & Industries Ltd. Versus CCE Noida vide Final Order No.71157/2018, the Tribunal in similar matter after examining the Explanation to Rule 6 added w.e.f. 1st March 2015 and CBEC Circular No. 1027/15/2016-CX dated 25.04.2016, held vide Paragraph 5 that, "the explanation added to Rule 6 will not change the scenario declared by various courts including the Hon'ble Supreme Court"

and allowed the appeal. The Tribunal on similar issue, where the Department relied upon the amendment vide explanation under sub-rule (1) of Rule 6 of CENVAT Credit Rules, 2004 w.e.f. 01.03.2015, dismissed bunch of Appeals of Revenue in case of Commissioner CGST Meerut Vs. Bajaj Hindustan Sugar Limited vide Final Order No.70955-70958 of 2019 dated 15.05.2019.

10. Further, we find that the Commissioner (Appeals) vide the impugned Order-in-Appeal has decided the matter before him, as under:-

> *6. I have carefully gone through the facts and records of the case as well as the submissions made by the appellant. I find that the appellant was a manufacturer of galvanized tubes & pipes for the manufacture of which zinc was used for galvanization. The contention of the appellant is that during the process of galvanization zinc waste/ash is produced which is not a manufactured product and provisions of Rule 6 of the CCR are not applicable as it applies to manufacture of exempted goods and he was not manufacturing flux skimming/zinc dross, which comes into existence during the manufacture of Galvanized Steel Pipes/Tubes. I further find that the adjudicating authority, in the impugned order, has held that in view of the amendment made vide Notification No. 06/2015-CE(NT) dated 01.03.2015, the flux skimming/zinc dross which are claimed to be unusable waste/residue, will also be treated as exempted goods for the purpose of Rule 6 of the CCR, as these are being sold to various customers on consideration and as the appellant is manufacturing both dutiable and exempted goods and therefore liable to pay 6% of the value of the exempted goods in terms of Rule 6 (3)(i) of the CCR. In this regard, I find that the provisions of Rule 6 of the CCR mandates manufacture of exempted goods in relation to which input and input services are used and that unless the exempted goods are manufactured, Rule 6 would not apply. In this regard, I find that Hon'ble Apex Court in the case of Union of India*

Vs DSCL Sugars [2015 (322) ELT 769 (SC)], it has been held as under:

> *" 10 In the present case it could not be pointed out as to whether any process in respect of Bagasse has been specified either in the Section or in the Chapter note. In the absence thereof this deeming provision cannot be attracted. Otherwise, it is not in dispute that Bagasse is only an agricultural waste and residue, which itself is not the result of any process. Therefore, it cannot be treated as falling within the definition of Section 2(f) of the Act and the absence of manufacture, there cannot be any excise duty.*
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> *11. **Since it is not a manufacture, obviously Rule 6 of the Cenvat credit Rules, 2004, shall have no application** as rightly held by the High Court."*

6.1 I find that the judgement of the Apex Court in respect of Bagasse, is squarely applicable in respect of flux skimming/zinc dross also as these are also not manufactured products. Accordingly, provisions of Rule 6 of the CCR are not applicable. Besides, there is nothing to infer that any Cenvatable input is used in the generation of flux skimming/zinc dross, as all / entire quantities of the inputs are used for manufacture of Galvanized Steel Pipes/Tubes. There is nothing to infer that any part of the zinc which was used for the galvanization of the steel tubes and pipes was not required and used in the process of galvanization of the said tubes and pipes which were dutiable goods and cleared on payment of duty. The adjudicating authority has failed to point out as to what part of the inputs and input services was not used in the manufacture of the dutiable goods i.e. Galvanized Steel Pipes/Tubes which could have been the ground for inviting the provisions of the said rule 6 of the CCR. The amendment carried out in the Rule 6 of the CCR, with *effect from 01.03.2015, clarifying that for the purpose of Rule 6, exempted goods would include non-excisable goods and the CBEC Circular No.1027/15/2016-CX dated 25.04.2016, issued in this regard, is not relevant as no manufacture is involved in the (emergence of flux skimming/zinc dross and therefore, Rule 6 of the CCR is not applicable as held by the Apex Court in their decision referred to above. The demand in terms of the said Rule 6 of the CCR is misconstrued and the same is therefore not sustainable.*

7. In view of above discussions and findings the impugned order is set aside, and the appeal bearing No.2389/CE/NOIDA/APPL/GBN/2017-18 dated 23.03.2018, filed by M/s Apollo Tubes Ltd., A-19 & 20, Industrieal Area, Sikandrabad, Distt. Bullandshahar (UP) is allowed."

11. In view of the above discussion, we do not find any infirmity in the impugned order and accordingly, the same is sustained.

12. Appeal filed by the Revenue is dismissed.

(Operative part of the order pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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