FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 18/05/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70507-70508/2017-SM[BR] dated 05/05/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2008/2006	C.C.E, LUCKNOW 7-A,ASHOK MARG LUCKNOW
2	C/579/2010	JINDAL SAW LTD. A-1,UPSIDC INDL AREA,NANDGAON RAOD, KOSIKALAN MATHURA ,,
		Name and Address of Respondent
3		JINDAL SAW LTD. A-1,UPSIDC INDL AREA,NANDGAON RAOD, KOSIKALAN MATHURA ,,
4		-C.C. LUCKNOW Hall No. 3,5th and 11th floor, Kendriya Bhawan, Sector -H, Aliganh, Lucknow 226024.

Copy To

5Advocate(s) / Consultant(s):

R. Santhanam
C-3/210,
JANAK PURI,
NEW DELHI,
DELHI
110058

6 Bar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL Nos.E/2008/2006-EX with C/579/2010-CU[SM]

(Arising out of Order-in-Appeal No. 14-CE/2006 dated 31/01/2006 & 20-Cus/LKO/2010 dated 16/08/2010 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

Commissioner of Central Excise, Lucknow (in Appeal No.E/2008/2006)

M/s Jindal Saw Ltd. (in Appeal No.C/579/2010) **Appellants**

Vs.

M/s Jindal Saw Ltd. (in Appeal No.E/2008/2006)

Commissioner of Customs, Lucknow

(in Appeal No.C/579/2010) **Respondents**

Appearance:

Shri Rajeev Ranjan, Joint Commissioner, (AR) for Revenue
Shri R. Santhanam, Advocate, for Party

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 05/05/2017
Date of Decision : 05/05/2017

FINAL ORDER NOs....70507 – 70508/2017

Per: Anil Choudhary

The present appeals are filed by both revenue and appellants, against Order-in-Appeal No. 14-CE/2006 dated 31/01/2006 & 20-Cus/LKO/2010 dated 16/08/2010 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow.

2. The issue in these two appeals is whether the assessee M/s Jindal Saw Ltd. should have paid Customs duty or Central Excise duty on the finished products namely steel pipes, under the fact that they

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were granted Customs license for private bonded warehouse under Section 58 of the Customs Act, 1962, for storage of raw material without payment of Customs duty. They were also granted permission for in-bond manufacturing under Section 65 of the said Act. Being permission letter dated 16th September, 2004, subject to fulfilment of the conditions that they will follow all the provisions of manufacture and other operations under Warehouse Regulation, 1966 as amended from time to time and provisions of Act and rules made there under as amended from time to time.

2. The appellant-assessee procured the steel plates and set of connectors by way of importation at nil rate of Customs duty as per provisions of Notification No.21/2002–Cus for manufacture of Steel Pipes to make the supply, against orders of ONGC Ltd., Mumbai for offshore oil exploration or exploitation. The pipes so manufactured were supplied to ONGC Ltd. and 16.353 MT of steel scrap generated during manufacturing was cleared on payment of Customs duty, in terms of Sub-section 2 (a) of Section 65 of the Customs Act, 1962.

3. Three separate show cause notices were issued, demanding differential duty for short levy, as the appellant had paid Central excise duty on their finished products, whereas revenue felt that the appellant should have paid Customs duty and not the Central Excise duty. The details of the show cause notices are as follows:-

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Sl. No.	Show Cause Notice Nos. & Date	Amount of duty
1.	PF/Saw Pipes/Kosi/03/1336 dt. 04.09.03	Rs.1,85,751/-
2.	PF/Saw Pipes/Kosi/03/1338 dt. 04.09.03	Rs.1,25,785/-
3.	PF/Saw Pipes/Kosi/03/1340 dt. 04.09.03	Rs.38,734/-
	TOTAL--------	**Rs.3,50,270/-**

4. Aforementioned show cause notices were adjudicated vide Order-In-Original dated 08th February, 2005 by the Additional Commissioner, Lucknow, who was pleased to confirm, total demand of Rs.3,50,270/- under Section 28 (2) of the Customs Act, with interest and further penalty of Rs.10,000/- was imposed under Section 117 of the Customs Act. Being aggrieved, the appellant-assessee preferred appeal before the learned Commissioner (Appeals) who vide the impugned order was pleased to allow the appeal, setting aside the Order-in-Original. The learned Commissioner observed that it is not disputed that the appellant manufactured goods under bond and cleared to ONGC Ltd. on payment of Central Excise duty. During in bond manufacturing the scrap was generated which was cleared on payment of Customs duty in terms of proviso to Sub-section 2(a) of Section 65 of the Customs Act. The adjudicating authority has not disputed the payment of Central Excise duty of Steel Pipes, supplied to ONGC nor disputed the manufacturing of pipes from imported steel plates, but there is dispute that steel pipes, that is finished goods, manufactured from imported materials have been cleared for home consumption, unable to export. Hence, it was alleged in the show

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cause notices that Customs duty should be paid on the value of steel plates contained in the waste and scrap and not on the value of waste and scrap as if it had been imported into India in that form. The learned Commissioner also took notice about applicability of Section 65 (2) (b) of the Customs Act, in respect of the scrap/waste arising during in-bond manufacturing. Even in the permission letter dated 28/06/2003 given by Deputy Commissioner, Central Excise, Division-II, it is stated that scrap or waste generated during in bond manufacturing should be cleared from the warehouse immediately, after the completion of the bond manufacturing, on payment of Customs duty calculated as per Sub-section 2 of Section 65 of the Customs Act and nothing has been stated specific that Customs duty will be paid on the value of steel plates contained in waste/scrap and not on value of scrap/waste, as if it had been imported into India in that form. Accordingly, learned Commissioner (Appeals) held that the demand of Customs duty on the value of steel plates and connectors contained in the waste/scrap is not sustainable and the appellants have correctly paid the duty of Customs, as applicable on waste and scrap, as if it had been imported into India as waste/scrap, both in terms of the two public notices as well as in terms and conditions laid down by the Assistant Commissioner while granting permission to the appellants.

5. The learned Counsel for the appellant-assessee Mr. R. Santhanam, draws my attention to the clarification by CBEC in view of which the controversy stands settled. He has drawn my attention to

the clarification dated 9th May, 2006 being F. No.473/13004-LC, Ministry of finance, Department of Revenue regarding–duty liability in respect of in bond manufactured goods required for the purpose of offshore oil exploration/exploitation project of ONGC. The clarification reads as follows: –

"the matter has been re-examined in the board. It is now clarified that in the instant case, the end product that is pipes would be subject to the Central Excise duty leviable on the assessable value of the pipes under Section 3 of Central Excise Act, 1944. The proviso to Section 3 of Central Excise Act, 1944, regarding levy of Excise duty of an amount equal to Customs duties on goods manufactured by 100% EOU is not applicable to manufacturing in bond under Section 65 (1) of the Customs Act, 1962".

6. In this view of the matter, the learned Counsel urges that the appellant-assessee have rightly paid Excise duty on their finished products and have rightly paid Customs duty on the waste and scrap and accordingly, the show cause notices and the impugned orders are not sustainable and accordingly, he prays for consequential relief in favour of the assessee, from this Tribunal.

7. The learned A.R. for revenue has relied on the impugned orders. But at the same time states that in view of the clarification by the CBEC the same is to be followed, and decision taken accordingly.

8. Accordingly, in view of the findings of the learned Commissioner (Appeals) being order dated 31/01/2006 Appeal No.14–CE/06, which is in conformity with the view expressed by the

Board vide the clarification dated 9th May, 2006 I hold that the appellant assessee have rightly paid Central excise duty on the finished products and have rightly paid Customs duty on the waste and scrap generated in the course of manufacture, cleared in DTA. In this view of the matter, the show cause notices are not tenable.

9. Similarly in the assessee's appeal, I notice that vide show cause notice, under the impression of revenue that appellant is required to pay Customs duty on scrap, as per the import price on value of the steel sheets and connectors, relatable to the weight of the imported material and the assessee have wrongly paid Customs duty at the scrap value. Accordingly, differential duty of Rs.90,584/- was demanded on the clearance of 16.353 MT steel scrap under the provisions of Section 20 of the Customs Act. In view of my findings and clarification of the CBEC dated 09th May, 2006, I find that the show cause notice is not sustainable and accordingly the appeal succeeds and the impugned order is set aside. To sum up Appeal No.C/579/2010–CU filed by the appellant-assessee is allowed. Appeal No.E/2008/2006 filed by revenue is dismissed. The appellant-assessee shall be entitled for consequential benefits, in accordance with law.

(Dictated in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

akp

प्रमाणित प्रति/Certified True Copy
24/05/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001