CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/20810/2018-SM, E/20880/2018-SM, E/20881/2018-SM

[Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-167-2017-18 dated 29/01/2018 passed by Commissioner of Central Tax (Appeals), BELGAUM.]

[Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-359-360-2017-18 dated 26/03/2016 passed by Commissioner of Central Tax (Appeals), BELGAUM.]

M/s. Mukand Ltd
Ginigera
KOPPAL DIST - 583228
KARNATAKA

Appellant(s)

Versus

Commissioner Of Central Tax And Central Excise, Belgaum
N0.71, Club Road, Belgaum
Belgaum - 590001
Karnataka

Respondent(s)

Appearance:

Mr. M.S. NAGARAJA, ADV
M/S. T.RAJESWARA SASTRY & ASSOCIATES,
NO.48, 11TH MAIN ROAD,
BANASHANKARI II STAGE,
BANGALORE 560070

For the Appellant

Mr. K. Murali,
Superintendent (AR)

For the Respondent

Date of Hearing: 23/10/2018

Date of Decision: 23/10/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 21639-21641 / 2018

Per : S.S GARG

Appellants have filed these three appeals against the impugned order dated 29.1.2018 and 26.3.2018 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant. The common issue involved in all the three appeals is whether slag generated as waste product in the course of manufacture of alloy and non-alloy steel as dutiable final product attracts the provisions of Rule 6 of CENVAT Credit Rules (CCR), 2004 requiring payment of an amount equal to 6% of the value of the said waste product. Since the issue is identical in all the three appeals, therefore, all the three appeals are being disposed of by this common order. Details of all the three appeals are given herein below:

Appeal No.	Period	OIA	Amount of 6% of value of slag	Penalty
E/20810/2018	April 2014 to March 2015	No.BEL-EXCUS-000-APP-MSC-167-2017-18 dated 29.01.2018	Rs.24,047/-	Rs.2,404/-
E/20880/2018	April 2015 to June 2015	No.BEL-EXCES-000-APP-MSC-359 & 360-2017-18 dated 26.3.2018	Rs.4,16,739/-	Not quantified
E/20881/2018	July 2015 to March 2016	-do-	Rs.1,71,943/-	Not Quantified

2. Briefly the facts of the case are that the appellants are manufacturers of alloy and non-alloy steel by using Energy

Optimizing Furnace (EOF), processing hot metal in the Ladle Refining Furnace (LRF) and making steel in the Steel Melting Shop (SMS). During the process of manufacture of steel the slag arises in the EOF as inevitable waste. The EOF slag is in the form of slurry. On further lancing with oxygen, the slag floats to the surface and is taken out before tapping hot metal. The hot metal is transferred from EOF to the Ladle Refining Furnace (LRF) where Ferro Alloys are charged to obtain the required grade of steel. The appellants have taken CENVAT credit on inputs and input services used in or in relation to manufacture of alloy and non-alloy steel in the form of billets, blooms and rounds, as dutiable final products in terms of Rule 2(k), Rule 2(l) and Rule 3 of the CENVAT Credit Rules, 2004. In the process of manufacture of dutiable steel, the slag arises as inevitable waste product. There is no 'manufacture' of slag. The department has initiated proceedings against the appellant to demand an amount equal to 6% of the value of slag on the ground that the same is 'exempted goods' notwithstanding the fact that it is only a waste product. The Assistant Commissioner in one of the appeal No. E/20810/2018 vide OIO dated 1.11.2010 in para 10 has accepted the legal position for the period from April 2014 to February 2015, however, he has confirmed the proportionate demand of an amount equal to 6% of the value of slag for the month of March 2015 on the ground that Notification No.6/2015-CE dated 1.3.2015 has inserted Explanation 1 to Rule 6(1) of CCR, 2004.

3. Heard both sides and perused the records.

4. Learned counsel for the appellant submitted that the impugned orders are not sustainable in law as the same has been passed without properly appreciating the facts and without considering the binding judicial precedent. He further submitted that the provisions of Rule 6 are applicable only when the manufacturer undertakes to manufacture exempted goods or non-excisable goods as final products. The provisions of Rule 6(1)(2)(3) of CCR, 2004 do not apply to waste and in the instant case, EOF slag admittedly arises as waste or by-product in the course of manufacture of dutiable final products. He further submitted that insertion of Explanation 1 to Rule 6(1) of CCR, 2004 w.e.f. 1.3.2015 cannot render EOF slag which is admittedly a 'waste' product, to be manufactured 'final products'. Since slag admittedly a waste product arises in the course of manufacture of steel, the provisions of Rule 6 of CCR, 2004 have no application even after 1.3.2015. He further submitted that this issue is no more *res integra* and in the appellant's own case for an earlier

period, this Tribunal vide its Final Order No.20404/2015 dated 20.2.2015 has held that Rule 6 will not apply in a case where exempted by-products or waste emerge in the course of manufacture of dutiable final products. He also relied upon the following decisions in support of his submissions that in the case of slag generated in the process of manufacture do not attract applicability of Rule 6 of CCR, 2004.

(i) UOI vs. Hindustan Zinc Ltd.: 2014 (303) ELT 321 (SC)
(ii) Balrampur Chini Mills Ltd. vs. UOI: 2014 (300) ELT 372 (All.)
(iii) Rallis India Ltd. vs. UOI: 2009 (233) ELT 301 (Bom.)
(iv) Shree Balaji Ispat vs. CCE, Raipur: 2013 (290) ELT 120 (Tri.-Del.)
(v) Agarwal Channel Mills Pvt. Ltd. vs. CCE: 2016 (332) ELT 145 (Tri.-Del.)
(vi) ISMT Ltd. vs. CCE, Pune: 2015 (329) ELT 919 (Tri.-Mum.)

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the EOF slag is a waste product which arises in the course of manufacture of dutiable final products. Further, I find that the Division Bench of this Tribunal in appellant's own case for an earlier period has held that Rule 6 will not apply in the case where the exempted by-

product or waste emerges in the course of manufacture of dutiable products. It is well settled that slag arising in the course of manufacture of iron and steel is a waste and that the provisions of Rule 6 of CCR, 2004 are not attracted. In this regard, it is relevant to reproduce the findings of the Division Bench which is recorded in paragraphs 3 and 4 of the said order and the same is reproduced herein below:

> *"3. We find that the issue is no more res integra. The Hon'ble High Court of Bombay in the case of Rallis India Ltd. vs. Union of India [2009 (233) E.L.T. 301 (Bom.)] has held that when common inputs or services are used in the manufacture of dutiable and exempted by-products, no liability to reverse a percentage amount of the waste exempted by-products would arise. Similarly, the Hon'ble Supreme Court in the case of Commissioner of Central Excise vs. Gas Authority of India Ltd. [2008 (232) E.L.T. 7 (SC)] has considered an identical issue and has held that lean gas which emerges as by-product during the manufacture of the final products, would not call for payment of any percentage amount on its value in terms of erstwhile Rule 6 of CENVAT Credit Rules. The said decision again stands confirmed by a later decision of the Hon'ble Supreme Court in the case of Union of India vs. Hindustan Zinc Ltd. [2014 (303) E.L.T. 321 (S.C.)].*
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> *4. In view of the above, we find no reason to interfere in the impugned order of the Commissioner (Appeals). The same is, accordingly, upheld and the Revenue's appeal is rejected."*

6.1 In view of the Division Bench decision in appellant's own case along with other cases relied upon by the appellant cited supra, I am of the considered view that the impugned orders are not sustainable in law and therefore, they are set aside by allowing the appeals of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **23/10/2018**)

S.S GARG
JUDICIAL MEMBER

rv...