

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISION BENCH

Court-I

Appeal No.E/955/2010

(Arising out of OIA No.20/Cm/PKL/2009-10 dt.11.3.2010
passed by the CCE (Appeals), Panchkula)

Date of hearing/Decision:06.12.2018

M/s. Prabhat Fertilizers & Chemical Works Appellant

Vs.

CCE, Panchkular

Respondent

Present for the Appellant: Shri Jagmohan Bansal, Advocate

Present for the Respondent: Shri M.S.Dhindsa, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)

Hon'ble Mr.Bijay Kumar, Member (Technical)

FINAL ORDER NO.63601/2018

PER: ASHOK JINDAL

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is engaged in the manufacture of zinc ingots, zinc ash and zinc sulphate. On 20.10.2007 acting on an intelligence that the appellant is clearing the agricultural grade zinc sulphate ordinarily used as micronutrients falling under sub heading 28332990 of the first Schedule to the Central Excise Tariff Act, 1985 without payment of duty, the factory premises of the appellant visited by the Preventive Officers of Central Excise Division, Ambala. From the records, it was found that the appellant is not paying duty on zinc sulphate cleared by them during the period from 1.7.2007 to 8.10.2007 and also not mentioning the details of zinc sulphate agricultural grade cleared by them in their ER-I Returns. Prior to 1.1.2007, the Agricultural grade zinc sulphate ordinarily used as

micronutrients was specifically classifiable under Chapter sub heading 28332610 of the first Schedule to the Tariff and is chargeable to nil rate of duty. But with effect from 1.1.2007, tariff item No.28332610 was omitted from the Schedule to the Central Excise Tariff Act, 1985. Consequent to the above amendment in the tariff, with effect from 1.1.2007, zinc sulphate is classifiable under tariff item No.28332990 and attracting duty @ 16% ad valorem and Education Cess @ 2% of CENVAT and Higher Secondary Education Cess @ 1% of the Cenvat payable with effect from 1.3.2007. Vide Notification No.36/2007-CE dt.9.10.2007, zinc sulphate was exempted from Central Excise duty with effect from 9.10.2007. Therefore, for the period 1.1.2007 to 8.10.2007, the product zinc sulphate was liable to pay duty. In these sets of facts, a show cause notice dt.30.1.2008 was issued to the appellant to demand duty on Zinc sulphate cleared by the appellant during the period 1.7.2007 to 8.10.2007. During the pendency of the show cause notice, a Notification No.13/09-CE (NT) dt.3.6.2009 was issued and as per the said notification, the payment of duty on zinc sulphate was exempt from payment of duty for the period from 1.1.2007 to 8.10.2007 on the condition that no credit on inputs used in the manufacture of zinc sulphate is availed by the assessee. Therefore, a Memorandum was issued on 5.1.2010 to the appellant for reversal of credit on zinc skimming/ash captively consumed in the manufacture of zinc sulphate. The matter was adjudicated, and the benefit of Notification No.13/09-CE (NT) dt.3.6.2009 was denied on the ground that the appellant has availed credit on duty paid on inputs used in the manufacture of zinc sulphate (agricultural grade). Therefore, they are liable to pay duty on zinc

sulphate (agricultural grade) for the period 1.1.2007 to 8.10.2007.

Against the said order, the appellant is before us.

3. Shri Jagmohan Bansal, Ld. Advocate appeared on behalf of the appellant and submits that the appellant imported zinc skimming which was converted into zinc ash. Zinc ash is captively consumed in the manufacture of zinc ingots as well zinc sulphate (agricultural grade). The appellant did not pay duty on the zinc ash used for manufacture of zinc ingots in terms of Notification 67/95-CE but paid duty on zinc ash which has been used in the manufacture of zinc sulphate (agricultural grade) which amounts non avilment of Cenvat credit on zinc ash which has been used in the manufacture zinc sulphate (agricultural grade). Therefore, the appellant has complied with condition of Notification No.13/09-CE (NT) dt.3.6.2009 and is entitled to clear zinc sulphate grade without payment of duty. In that circumstance, the proceedings initiated against the appellant are not sustainable.

4. It is further submitted that apart from conversion of zinc skimming into zinc ash, the appellant is procuring the zinc ash from open market and no credit has been availed on that by the appellant which has been used in the manufacture of zinc sulphate (agricultural grade).

5. On the other hand, Ld. AR supported the impugned order.

6. Heard the parties and considered the submissions.

7. On careful consideration of the submissions made by both sides, we find that the benefit of Notification No.13/09-CE dt.3.6.2009 sought to be denied on the premise that the appellant has taken credit on zinc skimming which has been used in the

manufacture of zinc ash which was captively consumed in the manufacture of zinc sulphate (agricultural grade). In fact, to manufacture zinc sulphate (agricultural grade), the input is zinc ash and zinc ash has been manufactured by the appellant on which duty has been paid. Zinc ash was also procured from open market on which the duty has been paid by the appellant and no credit taken by the appellant. The said fact has been confirmed by the report of Deputy Commissioner of Central Excise Division Ambala vide letter dated 20.1.2013. Further, we find that although the appellant has availed credit on zinc skimming which has been converted into zinc ash on which the duty has been paid by the appellant. The credit of duty paid on captively consumed zinc ash used in the manufacture of zinc sulphate agricultural grade has not been taken by the appellant. Therefore, the appellant is entitled to avail the benefit of Notification No.13/09-CE (NT) dt.3.6.2009 and not liable to pay duty during the period from 1.7.2007 to 8.10.2007.

8. In view of above observations, we do not find any merit in the impugned order and the same is set aside.

9. In the result, the appeal is allowed with consequential relief.

(operative of the order was pronounced in the court)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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