IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal Nos.: E/00477-00480/2012

(Arising out of Order-in-Appeal No. 29-32/2012 dated 30.08.2012 passed by the Commissioner of Central Excise (Appeals), Salem)

The Madras Aluminium Company Ltd. : Appellant

Vs.

Commissioner of Central Excise, Salem : Respondent

Appearance:-
Shri. S. Bharkavi, Advocate
for the Appellant

Shri. S. Govindarajan, AC (AR)
for the Respondent

CORAM:
Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision:**27.07.2018**

Final Order No. 42182-42185 / 2018

Per Bench,

Brief facts are that the appellants were the manufacturers of Aluminium from Bauxite ore which is mixed with caustic soda lye, Burnt lime, etc., where Red Mud is collected as a residue. The lower authority considered the same to be a manufactured product classifiable under heading 26219000 of CET Act, 1985. Hence, Show Cause Notices were issued to the appellant as to why the Red Mud should not be classified under CHSH.26219000 attracting CENVAT of 8% and 10% *ad valorem* with respective education cess and secondary higher education cess. In addition to that duties with interest were demanded and also proposing to impose penalty under Section 11AC of the CEA, 1944. Accordingly, the lower authorities confirmed the demands with interest and imposed penalty vide Orders-in-Original Nos. 161-163/2011 C. Ex. dt. 14.10.2011. In appeal, the Ld. Commissioner (Appeals), Salem upheld the demand and interest and also imposed penalties. Hence, the appellant is now before the Tribunal.

2. Ld. Counsel Shri. S. Bharkavi appearing for the appellant made the following submissions :

(i) That the issue is no more *res integra* and that the issue of excisability of red mud is settled by the jurisdictional High Court in their own case ***in Madras Aluminium Company Ltd. Vs. C.C.E. Salem – 2006 (193) E.L.T. 98 (Tri. – Chennai).*** That the insertion of the Explanation to Section 2(d) of the Excise Act does not alter the position of law to render waste arising during manufacture of aluminium as excisable. This has been held by the Hon'ble Apex Court ***in Grasim Industries Ltd. Vs. UOI – 2011-TIOL-100-SC-CX*** and by the Hon'ble Bombay High Court in ***HINDALCO Industries Ltd. Vs. UOI – 2014-TIOL-2266-HC-MUM-CX.***

(ii)Red mud is only a waste/residue and not a manufactured commodity. That it does not satisfy the test of marketability and hence does not qualify to be excisable goods.

3. Ld. AR, Shri. S. Govindarajan supported the findings in the impugned order.

4. Heard both sides

5. We have heard the rival contentions and perused the materials on record. We find that this issue is no more *res integra* as the same is covered by the decision of this very Bench in the appellant's own cases for earlier periods in ***Final Order No. 43216/2017 dt. 22.12.2017*** and ***2015-TIOL-1147-CESTAT-MAD*** wherein the Bench has held in favour of the appellants. We are therefore of the considered opinion that the impugned order requires to be set aside, which we hereby do.

6. The appeals are therefore allowed.

(Dictated and pronounced in open Court)

(Madhu Mohan Damodhar)	**(Sulekha Beevi C.S.)**
Member (Technical)	Member (Judicial)

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