

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Excise Appeal No.40065 of 2013

(Arising out of Order-in-Appeal No.229/2012 dated 25.09.2012 passed by Commissioner of Customs & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirapalli 620 001)

M/s.Vasan Engineering Industries P. Ltd.

...Appellant

S.F.No.11/10, 11/11,
Trichy-Pudukottai Road,
Mathur,
Pudukottai.

Versus

Commissioner of GST & Central Excise,

...Respondent

Tiruchirappali Commissionerate
No.1, Williams Road, Cantonment,
Tiruchirapalli 620 001.

APPEARANCE:

Shri M.N. Bharathi, Advocate
For the Appellant

Ms. G. Anandalakshmi, Superintendent (A.R)
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING : 10.04.2023

DATE OF DECISION : 12.04.2023

FINAL ORDER No.40264/2023

Order : [Per Ms. Sulekha Beevi C.S.]

The issue involved in this appeal is whether the scrap generated during the course of manufacture is liable for payment of excise duty.

2. Brief facts of the case are that the appellants are engaged in the manufacture of boiler components falling under CETH 84029090 of the first Schedule to the CETA 1985. Based on intelligence gathered by Anti Evasion Wing that the appellant cleared scrap generated in the course of final product during the period 01.03.2006 to 31.12.2010 without payment of central excise duty, investigation was conducted. It revealed that appellant was doing fabrication of boiler components as job work to BHEL, Trichy during the year 2004 onwards. The above conversion work was undertaken in terms of Notification No.214/86-CE dated 25.03.1986 whereby BHEL undertook to pay Central Excise duty on all the finished products. The inputs were supplied by BHEL. On completion of job work at the factory premises of the assessee, the final products viz. boiler components were despatched to BHEL under job work challan and the scrap generated during the manufacturing process was retained by the appellant themselves. BHEL raised documents to the effect that the scrap was sold to the appellant on payment of excise duty. It was stated by the appellant that such scrap was either used by them in their manufacturing activity or sold to other as resale of duty paid scrap by raising commercial invoices. Appellants had not paid duty while clearing the scrap and had not maintained account with regard to production and removal of scrap generated in the factory.

3. Further the scrap generated during the course of manufacture of wind mill components on account of M/s.Suzlon was also cleared by the appellants without payment of duty and no accounts were available.

4. The appellants had also done job work for M/s.Thermax, Pune and the scrap generated for works undertaken for Thermax was also cleared by them without payment of duty. The appellant did not maintain details of the scrap generated. Show cause notice dated 01.04.2011 was issued to the appellants proposing to demand duty along with interest and for imposing penalty. After due process of law, the original authority confirmed the demand for the period 2005-06 to 2009-10 along with interest and imposed penalty. Against such order, the appellants preferred appeal before the Commissioner (Appeals) who upheld the same. Hence this appeal.

5. Ld. Counsel Shri M.N. Bharathi appeared and argued for the appellants. It is submitted that the show cause notice alleges that the appellant has not discharged the excise duty in respect of the scrap generated during the manufacturing of wind mill towers for M/s.Sulzon Towers and Structures Ltd. and for the works undertaken for M/s.Thermax. Though in para 4.2A of the order passed by the appellate authority, there is discussion and finding with regard to job work done by appellants for BHEL, there is no issue raised in the SCN with regard to BHEL and there is no demand confirmed with regard to works undertaken for BHEL. Appellate authority has therefore rendered a finding with regard to BHEL also, which is a mistake.

6. Ld. Counsel submitted that during the manufacture of excisable products the scrap are generated. The appellant does not have any intention to manufacture scrap and their final product is not scrap. The scrap generated is inevitable during the course of manufacture. So, Section 2(f) of the Central Excise Act, 1944 is not attracted for levy of service tax. Ld. Counsel adverted to the decision of the Larger Bench of the Tribunal in the case of *Hindalco Industries Ltd. Vs CCE Mumbai* - 2014 (308) ELT 472 (Tri.-LB) and submitted that the Larger Bench had held that scrap is exigible to excise duty. The assessee therein preferred an appeal against such order of the Larger Bench before the Hon'ble High Court of Bombay. As per the decision reported in 2015 (315) ELT 10 (Bom.), the High Court held that the decision of the Hon'ble Supreme Court in the case of *Grasim Industries Ltd. - 2011 (273) ELT 10 (SC)* had analysed the very same issue after discussing Section 2(d) and 2(f) of the Central Excise Act, 1944 and held following the Apex Court decision that no excise duty is leviable on the scrap generated in the course of manufacture. The department preferred an appeal against the judgement passed by the Hon'ble High Court of Bombay before the Supreme Court. The appeal was dismissed by the Hon'ble Supreme Court upholding the decision of the High Court of Bombay as reported in *UOI Vs Hindalco Industries Ltd. - 2019 (367) ELT A246 (SC)*. It was held by the Supreme Court that waste and scrap are emerging as by-products during the course of manufacture of other products and therefore are not exigible to excise duty.

7. Ld. Counsel brought to the notice that the appellate Tribunal in the case of *Varun Beverages Limited Vs CCE & ST, Jaipur* - 2018 (4) TMI 823-CESTAT NEW DELHI has followed the said decision. The Larger

Bench of Tribunal in the case of *Ricela Health Foods Ltd. Vs CCE Chandigarh, Allahabad* - 2018 (361) ELT 1049 (Tri.-LB) had occasion to analyse the very same issue as to whether waste in the nature of fatty acids, wax and gum arising in the course of manufacture of refined vegetable oil are liable to excise duty. The Tribunal relied upon the decision of the Apex Court (supra). The Tribunal had observed that incidentally the products are nothing but waste arising during the course of refining of rice bran oil and cannot be considered as manufactured excisable goods. He prayed that the appeal may be allowed.

8. Ld. A.R. Ms. G. Anandalakshmi appeared and argued for the Department.

9. Heard both sides.

10. The issue is whether the scrap generated during the process of manufacture is liable to excise duty stands decided by the decision of the Hon'ble Bombay High Court in the case of *Hindalco Industries Ltd.* (supra). The said decision was maintained by the Hon'ble Apex Court by dismissing the appeal filed by the Department. In view thereof, we find that the demand of duty cannot sustain. In the result, the impugned order is set aside. Appeal is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 12.04.2023)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

