CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO.II

Excise Appeal No. 51603 of 2019

(Arising out of Order-in-Orginal No.ALW-EXCUS-000-COM-001-19-20 dated 15.05.2019 passed by the Principal Commissioner of Central Goods & Service Tax,Alwar (Rajasthan)]

M/s Indo Alusys Industries Ltd. **Appellant**
SP-2/333, RIICO Industrial Area,
Bhiwadi, Distt. Alwar(Raj.) 301019

VERSUS

Principal Commissioner of Central Goods and Service Tax, Customs and Central Excise, **Respondent**
"A" Block, Surya Nagar, Alwar (Rajasthan)

APPEARANCE:

Shri B.L.Yadav, Consultant for the appellant
Shri H.C. Saini, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.51634/2019

DATE OF HEARING/DECISION: 30.09.2019

ANIL CHOUDHARY:

The appellant a manufacturer of Aluminium Extrusions having their raw materials - Aluminium Scrap. Before feeding the scrap in the furnace, the foreign material is segregated manually and the foreign materials like Iron, steel, etc. are removed on payment of applicable rate of duty. Whether the demand raised by the Revenue by treating the said removal as removal of inputs as such and claiming applicability of Rule 3 (5) of CCR Rules, whether the same is correct.

2. This is second round of litigation. Show cause notice dated 25.3.2015 was issued as it appeared to Revenue that manual segregation of Aluminium scrap before charging the scrap to furnace and removal of unwanted items like iron, etc. which were removed on payment of duty as per their separate classification in the tariff, it appeared to Revenue that under the provisions of Rule 3 (5) of CCR 2004 read with Section 2 (f) of the Central Excise Act is attracted as such process did not amount to manufacture, and accordingly, the rate input credit has been taken on removal of unwanted (iron, brass, etc.) from scrap. There was requirement to reverse the duty at the same rate. As the assesee was removing some of the segregated metals (unwanted) and paid duty on the transaction value, at the tariff rate, it appeared to Revenue that the appellant had short paid duty, and should have removed the provisions of Rule 3 (5) of CCR 2004 as the removal amounts to, removal of the inputs as such.

3. The show cause notice was adjudicated on contest and the proposed demand of Rs.1,65,00,887/- was confirmed along with interest and penalty.

4. Being aggrieved, the appellant preferred appeal before this Tribunal in the earlier round and by Final Order No.A/56811 of 2017 EX(DB) dated 20.09.2017, the Tribunal allowed the assessee's appeal by way of remand taking notice of the Board's Circular No.1029/17/2016-CX dated 10.05.2016, where the clarification was given in respect of segregation of impurities like iron, steel, rubber, plastic, dust , etc. from scrap and upon clearance of unwanted items, like iron, rubber, dust, etc., it was clarified that such

segregated items cannot be treated as removal of inputs as such, as envisaged under Rule 3(5) of the CCR, 2004. Further, clarified that segregated foreign materials in such situation, shall be cleared on payment of central excise duty at transaction value as per its appropriate classification and rate of duty determined on merits. The Tribunal directed the Adjudicating Authority to redetermine the issue in the light of the Board's Circular dated 10.05.2016, after giving opportunity of hearing.

5. Being aggrieved, the Revenue preferred appeal before the Hon'ble Rajasthan High Court being Central Excise Appeal No.93/2018 and vide Order dated 11.10.2018, the Hon'ble High Court without disturbing the directions of this Tribunal for re-determination, further directed the Adjudicating Authority to determine the classification whether such activity of segregating the scrap amounts to manufacture or not and whether the Board's Circular dated 10.05.2016 would be applicable to the facts of the present case.

6. By the impugned order-in-original dated 15.05.2019, the ld. Commissioner has held as follows:-

> **"23.2** From plain reading of Board's Circular dated 10.05.2016 (supra), it is clear that it is applicable in respect of segregation of impurities viz. Iron, steel rubber, plastic, dust, etc. from Honey grade Brass scrap whereas in the present case the assessee procured Aluminium Mix Scrap on which Cenvat credit was availed. This mix Aluminium Scrap, was subjected to some sorting process and the segregated iron scrap out of this mix scrap was sold out in the domestic market as 'Residue' on much lower price, without

reversing the pro-rata Cenvat credit in terms of Rule 3(5) of the CENVAT Credit Rules, 2004. Moreover, the process undertaken by the assessee is nothing but another method of sorting iron from the Aluminium scrap as in this case neither the iron is taking part in the process of manufacture nor does it affects the process of manufacture. It would be not be correct to say that that scrap is manufactured out of scrap. The dutiability on scrap would arise, only if the same emerges from the skilful manipulation or processing of raw materials. In the facts and circumstances of the present, the said iron scrap has not undergone any manufacturing process and the same had arisen out of segregation of imported materials, hence was required to be cleared by the assessee in accordance with Rule 3(5) of the Central Excise Rules 2004 as the process of sorting/segregation of scrap undertaken by the assessee does not confirm to the definition of manufacture or the process amounting to manufacture.

23.3. I find that the Board's Circular dated 10.05.2016 clearly delineats the intention of the Government that the clearance of segregated foreign materials namely iron, steel, rubber, plastic, dust, etc. from Honey grade brass scrap, before feeding in the furnace cannot be treated as removal of "inputs as such" as envisaged under Rule 3(5) of the CENVAT Credit Rules, 2004. The said Circular is however not applicable in the present case of Aluminium Scrap as discussed in preceding para.

7. The ld. Principal Commissioner was pleased to redetermine the demand with interest and penalty under Section 11AC (1) (c) read with Explanation 1 (iii) of the Act. Being aggrieved, the appellant is before this Tribunal.

8. Having considered the rival contentions, we find that although the activities of manual segregation of the scrap does not amount to manufacture, but in view of the Board's Circular dated 10.05.2016, which is binding on the Authorities and the same being clarificatory in nature will have retrospective affect, we hold that the appellants have rightly cleared the segregated scraps at the transaction value as per its appropriate classification and the rate of duty given in the Central Excise Tariff. Accordingly, we hold that the demand is bad and the show cause notice is not maintainable. Accordingly, we allow this appeal and set aside the impugned order. The appellant shall be entitled to consequential benefit as per law.

[Order dictated & pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

Ckp.