

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50875 of 2018

(Arising out of order-in-original No. 42/2017-CE dated 29.12.2017 passed by the Additional Director General (Adjudication), Directorate General of GST Intelligence, New Delhi).

M/s Kopertek Metals Pvt. Limited

SP-238, Kaharani Industrial Area
Bhiwadi, Distt – Alwar (Rajasthan).

Appellant

VERSUS

**Commissioner, Central Goods &
Service Tax**

A-Block, Surya Nagar, Alwar (Rajasthan)

Respondent

WITH

Excise Appeal No. 50845 of 2018

(Arising out of order-in-original No. 42/2017-CE dated 29.12.2017 passed by the Additional Director General (Adjudication), Directorate General of GST Intelligence, New Delhi).

Jagdish Malhotra, Director

M/s Kopertek Metals Pvt. Limited

SP-238, Kaharani Industrial Area
Bhiwadi, Distt – Alwar (Rajasthan).

Appellant

VERSUS

**Commissioner, Central Goods &
Service Tax**

A-Block, Surya Nagar, Alwar (Rajasthan)

Respondent

AND

Excise Appeal No. 50846 of 2018

(Arising out of order-in-original No. 42/2017-CE dated 29.12.2017 passed by the Additional Director General (Adjudication), Directorate General of GST Intelligence, New Delhi).

Rajiv Malhotra, Director

M/s Kopertek Metals Pvt. Limited

SP-238, Kaharani Industrial Area
Bhiwadi, Distt – Alwar (Rajasthan).

Appellant

VERSUS

**Commissioner, Central Goods &
Service Tax**

A-Block, Surya Nagar, Alwar (Rajasthan)

Respondent

APPEARANCE:

Shri S. K. Pahwa & Shri Kuldeep Singh, Advocates for the appellant
Shri V. B. Jain, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NOS. 53635 – 53637/2018

DATE OF HEARING/DECISION: 19.12.2018

ANIL CHOUDHARY:

M/s Kopertek Metals Pvt. Limited (hereinafter referred to as the appellant) are engaged in the manufacture of copper ingots, copper wire rod, copper wire etc, which they remove on payment of Central Excise duty.

2. Vide the impugned order-in-original, the Additional Director General, DGGST Intelligence, New Delhi have ordered confiscation of 300 MT of copper slag valued at Rs. 7,24,20,000/- with option to redeem on payment of fine of Rs. 1.90 crore. Further, order was passed to release the seized 40 MT of copper scrap valued at Rs.1,70,00,000/-. Further, penalty was imposed amounting to Rs. 50 lakhs on the appellant Co. under Rule 25 of Central Excise Rules. Penalty was also imposed on the other appellants/ directors amounting to Rs. 10 lakhs each. However, proposed penalty on Shri Ravinder Singh, Incharge/ Supervisor of M/s Kopertek Metals Pvt. Limited and M/s Malhotra Cables Pvt. Limited was dropped.

3. Allegedly on the basis of specific information (received from DGCEI) that Mr. Amit Gupta, Director of M/s Progressive alloys India Pvt. Ltd., alongwith associated registered dealers namely (i) M/s Forward Minerals and Metals Pvt. Ltd. (ii) M/s Unnati Alloys (P) Ltd.,

(iii) M/s Moral alloys Pvt. Ltd., (iv) M/s Brilliant Metals Pvt. Ltd. was indulging in passing inadmissible cenvat credit to the manufacturers of excisable goods including KMPL, searched the factory of KMPL situated at Bhiwadi, Distt-Alwar and the godown of KMPL at Delhi, on 06.12.2012. The search led to-

- i) Detention of unaccounted 300 MT of copper slag (waste/W.I.P.) in the factory premises of KMPL generated during the manufacturing of copper rods.
- ii) Detention of 40 MT copper scrap valued at Rs.1,70,00,000/- at the godown.

4. Statement of Mr. Amit Gupta, (Director of PAPL) wherein he *inter alia* stated that he was running FMMPL, UAPL, MAPL, PALPL and BMPL; that these entities were registered with the Central Excise department as dealers and were engaged in passing on Cenvat credit to their customers; that they sold the material in the open market in cash without bills and passed on cenvat credit to the manufacturers on the strength of cenvatable invoices without supplying the corresponding material. Thus it appeared that the manufacturers including KMPL had availed inadmissible cenvat credit on the invoices of PAIPL, FMMPL, BMPL and UAPL.

5. The searches in the premises of Mr. Amit Gupta resulted in recovery of various incriminating documents showing sale of goods in cash in market, besides recovery of cash aggregating to Rs.1,05,00,000/-. Mr. Amit Gupta in his statement dated 06.12.2012 *inter alia* stated that for supplying invoices without actually supplying

the goods, they received payments through RTGS, 98% of which was returned in cash, and 2% was deducted or retained.

6. Mr. Jagdish Malhotra, Director of KMPL in his statement dated 07.12.2012 *inter alia* stated that Mr. Rajiv Malhotra, Mr. Tarun Malhotra and Mrs. Vandana Malhotra were the other Directors; that KMPL were engaged in manufacturing of copper rod and copper wire; and that KMPL were manufacturing copper rod from copper scrap and from copper rod, copper wire was drawn, which was sold to the two units of Malhotra Cables Pvt. Ltd. Mr. Jagdish Malhotra was also one of the Director of Malhotra Cables Pvt. Limited.

7. Mr. Rajiv Malhotra, common Director of KMPL and MCPL in his statement dated 14.01.2013 *inter alia* stated that he was looking after sale, purchase, finance of KMPL and MCPL; that KMPL were engaged in manufacturing of copper rods, ingots and copper wire of different sizes; that they procured copper scrap from abroad and copper rods from M/s Tamra Dhatu, M/s PBI Metals; that in KMPL they put scrap/ ingots in furnace for melting; that after filtration of impurities they got copper slag (ramnant) which was further processed by filtration and re-melted progressively; and that 300 MT of copper slag was generated during the process of manufacturing of copper rods, and contained approximately 35% to 55% of copper content which could be further filtered and used for manufacture of copper rods.

The testing of copper slag revealed that there was 56.8% of copper in the slag, which was therefore valued at Rs. 7,24,20,000/-.

The said copper slag was not accounted in the daily stock register of KMPL as required under Rule 10 of the Central Excise Rules, 2002; and was therefore seized.

Detention of 40 MT of copper scrap valued at Rs. 1,70,00,000/- at the godown was also converted into seizure.

8. Mr. Ravinder Singh, allegedly Supervisor/ In-charge at undeclared godown of KMPL/ MCPL, situated at Delhi, in his statement dated 06.12.2012, *inter alia* stated that he was working with Malhotras who were Directors of KMPL and MCPL; that Mr. Jagdish Malhotra, Director of KMPL was the owner of the premises A-117, Tulsi Ram Bhawan, Najafgarh Road, Moti Nagar, Delhi; and that he was sorting copper scrap in the said premises with the help of workers. Mr. Ravinder Singh failed to produce any document for the purchase of 40 MT copper scrap found in the said premises.

9. Mr. Ravinder Singh in his statement dated 21.12.2012 *inter alia* stated that he joined MCPL in 2009 as peon; that Mr. Jagdish Malhotra, Mr. Rajiv Malhotra and Mr. Tarul Malhotra were the owners of MCPL; that they had another unit namely KMPL at Bhiwadi; and that Mr. Jagdish Malhotra alongwith his sons Mr. Rajiv Malhotra and Mr. Tarul Malhora was looking after the business of KMPL. Mr. Ravinder Singh on being asked failed to produce the purchase documents for the said scrap and stated that the godown belonged to Mr. Jagidsh Malhotra.

10. During the course of investigation various scrap suppliers namely Mr. Yusuf Ansari, Mr. Mohammad Salim, Mr. Suresh Kumar

Sethi and Mr. Ragubar Dayal Gupta in their respective statement stated that they had supplied copper scrap to the godown situated at Delhi of KMPL and MCPL without any bill and received the payment in cash against delivery of the same. It thus appears that KMPL procured unaccounted scrap without bills from local traders/ scrap suppliers on cash basis for intended use in the manufacture of copper rod.

11. According to Rule 10 of the Central Excise Rules every assessee is required to maintain proper records on a daily basis, indicating the particulars regarding description of goods produced or manufactured, opening balance, quantity produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty actually paid.

12. Rule 12 of the Central Excise Rules, 2002 stipulates that every assessee shall submit a monthly return in the form specified in notification by the Board, of production and removal of goods and other relevant particulars.

13. Thus it appeared to Revenue that KMPL have contravened the provision of Rule 10 and Rule 12 of the Central Excise Rules, 2002; and therefore the seized goods are liable to confiscation under Rule 25 of the Central Excise Rules, 2002 and KMPL are liable to penalty under the Rule *ibid*.

14. Accordingly, show cause notice was issued on the appellant company proposing the confiscation of 300 MT of copper slag and 40

MT of copper scrap with proposal to impose penalty on the appellant company and its Directors and another. The show cause notice was adjudicated on contest and the proposal in the show cause notice was confirmed as stated hereinabove by the impugned order-in-original. Being aggrieved, the appellants are in appeals.

15. Learned Counsel for the appellants urges that there is no evidence to controvert the fact that copper slag was meant to be recycled and used in manufacture of copper ingots. Thus, copper slag was in the nature of work in progress, and was not required to be accounted for in terms of Rule 10 of Central Excise Rules. Thus, copper slag is not liable to confiscation and further no penalty is imposable. As regards 40 MT of scrap, it was submitted that the premises at Delhi have been taken on lease for the purpose of segregation of scrap by Shri Ravinder Singh, and had nothing to do with the appellant -KMPL. Even otherwise the unaccounted scrap lying in godown, which is not the factory premises of the appellant is not liable to confiscation. Further, Department had accepted the contention of the appellant with regard to 40 MT scrap lying at godown in Delhi, and order release of the same.

16. It is further urged that the order of confiscation of copper slag is based on Central Excise Rules which provides that the goods produced was manufactured, are to be entered in daily stock account. As copper slag (remnant) was generated during the process of manufacture of copper goods, no separate accounting was required in terms of Rule 10. Further, urged that appellant manufacture copper rod, ingots and copper wire for which they charge copper scrap/

ingots in furnace for melting, after filtration of impurities, they take out copper slag, that this copper slag is further processed by further filtration and again melted and filtered and thus copper rods are manufactured by way of continuous cast process in copper foil form. Further, the slag generated during the process of manufacture of copper rods normally contains 35% to 55% of copper. 'Copper slag' is not 'copper scrap' and is not marketable. There is nothing on record to suggest that copper slag is marketable or have ever been sold by the appellant. Reliance is placed on the ruling of Hon'ble Supreme court in **Union of India vs. Indian Aluminium Co. Limited -1995 (77) ELT 268 (SC)** where it has been held that ash, dross and skimmings, refuse ash, rubbish arising in the course of manufacture are different from waste and scrap, therefore, they are not 'goods' as defined in Section 2(d) of the Central Excise Act, 1944.

17. Accordingly, there is no requirement for day-to-day accounting of slag in terms of Rule 10 of Central Excise Rules, 2002. It is further urged that in the absence of contravention of Rule 10, the copper slag cannot be confiscated nor any penalty imposed under Rule 25. Further, the provision of Rule 25 are subject to the provision of Section 11AC of the Act, that is, the element of fraud, suppression, mis-representation etc. for evasion of duty. Reliance is placed on the ruling in **CCE, Lucknow vs. Shubh Metals – 2015 (318) ELT 282 (Tri. Del.)** and **CC&CE, Hyderabad vs. Mahalakshmi Profiles Ltd. – 2012 (279) ELT 355 (A.P.)**. Accordingly, learned Counsel prays for allowing the appeals.

18. Opposing the appeals, learned Authorised Representative for the Revenue relies on the impugned order. It is further urged that in view of the ratio of this Tribunal in **Greysam & Co. Vs. CCE, New Delhi- 2000 (117) ELT 350 (Tri.)** and **Steel Authority of India Ltd. vs. CCE, Raipur – 2006 (197) ELT 113 (Tri. Del.)**, copper slag is a manufactured goods arising in the process of manufacture and therefore, qualifies to be called as manufactured goods. Consequently, it is required to be entered in the daily stock account in accordance of Rule 10 of Central Excise Rules, 2002.

19. Having considered the rival contentions, we find that Revenue has not established that copper slag is marketable and further they have not identified the tariff entry or sub heading under which copper slag is dutiable. Thus, this finding of the adjudicating authority are vague and misconceived. Accordingly, we hold that appellant was not required to maintain the entry of copper slag as required under Rule 10 of the Central Excise Rules, 2002. Accordingly, we allow these appeals and set aside the impugned order. The appeals of the Directors are also allowed. The appellants are entitled to consequential benefits, in accordance with law.

(Operative part of order pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)