

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

PRINCIPAL BENCH, COURT NO. I

SERVICE TAX APPEAL NO. 53095 OF 2016

(Arising out of Order-in-Appeal No. 16/2016 dated 31.08.2016 issued under F.No. DZU/Adj/BIL/86/2016/7439 passed by the Additional Director General(Adjudication), Central Excise, Intelligence, Adjudication Cell, New Delhi)

M/s Bharti Infratel Limited

...Appellant

versus

Additional Director General,
DGCEI, New Delhi.

...Respondent

APPEARANCE

Shri B.L. Narasimhan and Ms. Poorvi Asati, Advocates for the appellant.
Dr. Neha Garg, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 15.09.2021

Date of Decision: 31.01.2022

FINAL ORDER NO. 50065/2022

JUSTICE DILIP GUPTA:

The order dated 31.08.2016 passed by the Additional Director General (Adjudication) in the Directorate General of Central Excise, Intelligence¹ has been assailed in this appeal. The said order seeks to confirm the demand of Rs. 19,65,03,88/- for the period from 27.09.2013 to 31.03.2015 with interest and penalty. The order also appropriates an amount of Rs. 3 crores earlier paid by the appellant.

2. The appellant is engaged in the provision of telecom

1. the Additional Director

infrastructural support services to various telecom companies and discharges service tax on the same under the category of 'support service of business or commerce'².

3. For providing the output service of BSS, the appellant purchased various capital goods namely lead acid batteries, air conditioners, transmission racks, fire alarms, smoke detectors etc. and availed CENVAT credit thereon. The credit availed on capital goods was utilized by the appellant in discharging its output service tax liability.

4. The appellant, thereafter, removed certain capital goods after their usage which were waste/scrap. At the time of removal, neither credit was reversed, nor any amount was paid as the appellant believed that there was no requirement of payment/reversal by an output service provider under rule 3(5A) of the CENVAT Credit Rules 2004³ during the relevant period. However, with respect to capital goods which were removed as used capital goods, the appellant paid the amount in terms of rule 3(5A) of Credit Rules.

5. The appellant claims that it had internally devised a 'Inventory Management Process' for the purpose of identification of scrap. The said process has been explained by the appellant in the following manner:

- a) When capital goods become unworkable after continuous usage, they are inspected by outside vendors within the warehouse of the appellant and a health certificate is issued by such vendors;

2. BSS
3. the Credit Rules

- b) Basis the health report and after undertaking cost/benefit analysis in terms of repair or purchase of new capital goods, a decision is taken by the appellant to either undertake repair of such capital goods or to purchase new capital goods;
- c) If the appellant decides to get the capital goods repaired, the same are repaired either within the warehouse of the appellant or in a workshop of the vendor's;
- d) However, if the said capital good cannot be repaired and the appellant has no alternate use of the same, the said goods are classified as obsolete and the procedure for clearance of such goods as scrap is triggered;
- e) Thereafter, a scrap inventory report is generated requiring approvals at various levels, including Circle Manager, Circle Operation Management Head, Circle Finance Head;
- f) If after approvals from the Circle, it is unanimously recommended to scrap off the capital good, a final approval is sought from the Head Office of the appellant;
- g) If such an approval is granted, the scrap disposal note is generated. Thereafter, the scrap is put for sale via e-auctions. The auction documents clearly mention the description of goods as 'scrap'; and
- h) Upon successful competition of the auction, goods are sold and invoices are raised describing the good as scrap.

6. The appellant has further stated that the purchasers of the goods are all scrap management companies and, in this respect, e-certificates have been issued to the purchasers by the Principal Environment Commissioner, Rajasthan State Pollution Control Board, for procurement and recycling of scrap under the

Hazardous Waste Management Rules.

7. However, proceedings were initiated by the Department with respect to the capital goods which were removed as scrap without payment or reversal of amount. Investigation was initiated by way of issuance of summons, examination of documents submitted by the appellant and recording of statements of DGM (Taxation) of the appellant. Thereafter, a show cause notice dated 29.12.2015 proposing recovery of amount in terms of rule 3(5A) of Credit Rules along with interest and penalty was issued to the appellant. The show cause notice mentions:

- (i) Even after the amendment to rule 3(5A) of Credit Rules, the appellant, being a service provider, was required to pay an amount equivalent to credit availed on such capital goods after factoring in depreciation;
- (ii) The capital goods cleared by the appellant as scrap were not actually in the nature of scrap and hence, the appellant contravened the provisions of rule 3(5A) of Credit Rules by not paying the amount equivalent to the CENVAT credit availed after factoring in depreciation;
- (iii) The appellant has deliberately changed the description of goods in their invoices by describing the same as scrap so as to evade the payment of amount under rule 3(5A) of Credit Rules;
- (iv) From the product brochure of telecom batteries manufactured by M/s. HBL Power System Ltd., the active life of a telecom battery is 20 years, but the appellant has cleared the batteries after 3-4 years of use as 'scrap battery cell' whereas in fact such battery cells were actually 'used battery cells'; and

- (v) The appellant has cleared these batteries even before the useful life of these batteries, as per the industry standards.

8. The appellant submitted a reply dated 28.06.2016 to the show cause notice and filed additional submissions to assert that it was not required to pay any amount in terms of rule 3(5A) of Credit Rules on clearance of capital goods as scraps, and therefore, the show cause notice was liable to be dropped.

9. However, the Additional Director passed the order dated 31.08.2016 confirming the proposed demand of Rs. 19,65,03,338/-, with interest and penalty.

10. Shri B.L. Narasimhan learned counsel for the appellant assisted by Ms. Poorvi Asati, made the following submissions:

- (i) Rule 3(5A) of the Credit Rules, will have no application in the present case. It is evident that in terms of payment of amount under rule 3(5A) of Credit Rules, during the relevant period, only 'manufacturer' was required to pay the amount in case of clearance of capital goods as scrap and not output service provider. The appellant, being an output service provider, was, therefore, not required to pay any amount in terms of rule 3(5A) of the Credit Rules during the relevant period from 27.09.2013 to 31.03.2015;
- (ii) The capital goods removed by the appellant are not used capital goods but scrap. There is a difference between used capital goods and scrap in rule

3(5A) of Credit Rules and in this connection reliance has been placed on the judgment of the Supreme Court in **Valji Khimji and Company vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and Others⁴**;

- (iii) The Additional Director committed an error in holding that something cannot be treated as 'scrap' just because it is no longer of any use to the seller and what has to be seen is that the said goods should be of no use for the market as a whole;
- (iv) The Additional Director committed an error in holding that in the absence of any evidence that the goods in question were used as waste or scrap, the goods cannot be said to be scrap. The goods have been sold by the appellant to the companies which are engaged in scrap management and have certificates issued to them by the Principal Environment Commissioner, Rajasthan State Pollution Control Board, for procurement and recycling of scrap under the Hazardous Waste Management Rules. Further, the invoices through which these goods were sold to these companies also describe the goods as scrap only;
- (v) The Additional Director committed an error in holding that there was no evidence that the goods cannot be used, even after due repairs and

4. (2008) 9 SCC 299

renovations, for any similar purpose. Hence, the goods cannot be considered as waste/scrap;

(vi) The definition of 'scrap' given under Explanation (b) to section 206C of the Income Tax Act, 1961, cannot be relied upon as it is settled law that in case a term has not been defined in the given Statute, reference to the definition of the said term in another Statute cannot be made. Instead, reference should be made to the dictionary meaning of the said term. In this connection, reliance has been placed on the judgment of the Supreme Court in **MSCO Pvt. Ltd. vs. Union of India and Others**⁵;

(vii) The extended period of limitation could not have been invoked and so the demand for the period 27.09.2013 to 30.09.2013 is time barred; and

(viii) Interest was not recoverable and penalties were not imposable.

11. Dr. Neha Garg, learned authorised representative appearing for the Department, however, supported the impugned order and made the following submissions:

(i) Old and used capital goods were removed on invoices mentioning the description as 'scrap of batteries', 'scrap of AC' etc. Thus the capital goods so removed were identifiable as purchased and had been cleared without breaking them into pieces;

5. **1985 (19) E.L.T. 15 (S.C.)**

- (ii)** The health check up reports submitted by the appellant do not mention any reason as to why the said goods were declared as scrap or whether the goods were scrap only from the purpose of the appellant or they could be used further for any other purpose;
- (iii)** It is apparent that the capital goods were cleared with their original form intact and there is no evidence they cannot be used even after repairs and renovation;
- (iv)** Prior to the period in question i.e. before 27.09.13, when the amount was payable in both cases - where the goods were cleared as used capital goods or as waste and scrap- the appellant was clearing them as 'used goods' and paying the said amount. However after the change in the rule, there was a change in this description. The appellant has not provided any reason or evidence thereof for this change;
- (v)** If a plea relates to certain factual aspects, the same must be substantiated by producing evidence;
- (vi)** There is an unusually large gap between the shelf life of some of the items suggested by the manufacturer's brochure and the actual shelf life before being declared as scrap; and
- (vii)** The extended period of limitation was rightly invoked and so was the levy of interest and penalty.

12. The submissions advanced by the learned counsel for the

appellant and the learned authorized representative appearing for the Department have been considered.

13. The issue that arises for consideration in this appeal is regarding the demand made on the amount required to be paid in terms of rule 3(5A) of the Credit Rules for **capital goods cleared as scrap**.

14. It would, therefore, be necessary to examine whether rule 3(5A) of the Credit Rules could have been invoked in the present case and for this purpose the scope of this rule as it stood prior to 27.09.2013 and post 27.09.2013 is required to be considered. The relevant portions of rule 3(5) and rule 3(5A) of the Credit Rules are contained in the following tabular form:

Sl.No.	Period	Rule 3(5) and Rule 3(5A) of Credit Rules				
1.	Prior to 27.02.2010	Rule 3(5)- ... Provided also that if the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output service shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by 2.5% for each quarter of a year or part thereof from the date of taking the CENVAT credit. Rule 3(5A)- If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.				
2.	Between 27.02.2010 to 16.03.2012	Rule 3(5) Provided further that if the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CEVAT Credit, namely:- (a) for computers and computer peripherals: <table><tr><td>for each quarter in the first year @ 10%</td></tr><tr><td>for each quarter in the second year @ 8%</td></tr><tr><td>for each quarter in the third year @ 5%</td></tr><tr><td>for each quarter in the fourth and fifth year @ 1%</td></tr></table>	for each quarter in the first year @ 10%	for each quarter in the second year @ 8%	for each quarter in the third year @ 5%	for each quarter in the fourth and fifth year @ 1%
for each quarter in the first year @ 10%						
for each quarter in the second year @ 8%						
for each quarter in the third year @ 5%						
for each quarter in the fourth and fifth year @ 1%						

		(b)for capital goods, other than computers and computer peripherals @ 2.5% for each quarter: Rule 3(5A): If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.				
3.	Between 17.03.2012 to 26.09.2013	Rule (5A): If the capital goods, on which CENVAT credit has been taken, are removed after being used, whether as capital goods or as scrap or waste, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:- (a) for computers and computer peripherals: <table border="1"><tr><td>for each quarter in the first year @ 10%</td></tr><tr><td>for each quarter in the second year @ 8%</td></tr><tr><td>for each quarter in the third year @ 5%</td></tr><tr><td>for each quarter in the fourth and fifth year @ 1%</td></tr></table> (b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter: Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.	for each quarter in the first year @ 10%	for each quarter in the second year @ 8%	for each quarter in the third year @ 5%	for each quarter in the fourth and fifth year @ 1%
for each quarter in the first year @ 10%						
for each quarter in the second year @ 8%						
for each quarter in the third year @ 5%						
for each quarter in the fourth and fifth year @ 1%						
4.	From 27.09.2013	Rule (5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:- (i) for computers and computer peripherals: <table border="1"><tr><td>for each quarter in the first year @ 10%</td></tr><tr><td>for each quarter in the second year @ 8%</td></tr><tr><td>for each quarter in the third year @ 5%</td></tr><tr><td>for each quarter in the fourth and fifth year @ 1%</td></tr></table> (ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter: Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.	for each quarter in the first year @ 10%	for each quarter in the second year @ 8%	for each quarter in the third year @ 5%	for each quarter in the fourth and fifth year @ 1%
for each quarter in the first year @ 10%						
for each quarter in the second year @ 8%						
for each quarter in the third year @ 5%						
for each quarter in the fourth and fifth year @ 1%						

		(b) If <u>the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.</u>
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(emphasis supplied)

15. Though the tabular chart depicts the correct position, but the burden of payment under rule 3(5A) in terms of clearance of used capital goods and clearance of capital goods as scrap in the light of the aforesaid amendments would be more clear from the following tabular chart:

Period	Who is required to pay the amount in terms of Rule 5(3A) in case of	
	Clearance of used capital goods	Clearance of capital goods as scrap
Pre 27.02.2010	Manufacturer and output service provider	Manufacturer
27.02.2010 to 16.03.2012	Manufacturer and output service provider	Manufacturer
17.03.2012 to 26.09.2013	Manufacturer and output service provider	Manufacturer and output service provider
Post 27.09.2013	Manufacturer and output service provider	Manufacturer

16. The period of dispute in the present case is from 27.09.2013 to 31.03.2015. It is evident from the aforesaid tabular chart that in terms of payment of the amount under rule 3(5A) of the Credit Rules during the said relevant period, only a 'manufacturer' was required to pay the amount in case of clearance of capital goods as scrap and not an output service provider. The appellant, being an output service provider, was not required to pay any amount in terms of rule 3(5A) of the Credit Rules during the period involved in the present appeal for

clearance of capital goods as scrap.

17. This position has also been accepted by the Additional Director in the impugned order, as would be evident from paragraphs A.3.6, A.4.5, and A.4.10 of the order. The said paragraphs are reproduced below:

"A.3.6. In this context on going through the provisions of CCR, 2004, **I find that there is no provision for payment of 'amount on clearance of capital goods as 'waste and scrap', by a service provider during the period in question here i.e. from 27.09.2013 to 31.03.2015. Hence, I fully agree with the contentions of the Noticee in this regard and hold that in absence of any provision, the service provider are not required to pay any 'amount' on the capital goods cleared by them as waste and scrap.** But the important question here is which capital goods can be considered as 'waste and scrap', which needs consideration here. The show cause notice alleges that the capital goods cleared by the Noticee are 'used capital goods' and not 'waste and scrap' as claimed by the Noticee, while the Noticee claims that the capital goods removed by them are in the nature of waste and scrap.

A.4.5. **Further, on going through the provisions of CCR, 2004, I find that there is no provision for payment of any 'amount' on clearance of capital goods as waste and scrap', by a service provider during the period in question here i.e. from 27.09.2013 and onwards. But which capital goods can be considered as 'waste and scrap' is an important aspect here, which needs to be decided here.**

A.4.10. **I find from the said provisions that during the period in question here i.e. post 27.09.2013, payment of amount on removal of 'waste or scrap' of capital goods by a service provider has been omitted."**

(emphasis supplied)

18. The issue that now needs to be decided is whether the capital goods involved in the present case which were cleared by the appellant without payment of any amount under rule 3(5A) of the Credit Rules can be considered as **used** capital goods or **waste and scrap**. The contention of the learned counsel for the appellant is that the capital goods removed by the appellant are '**scrap**', while the contention of the Department is that they are **used** capital goods.

19. The impugned order holds that the capital goods are not 'waste and scrap' and the findings recorded by the Additional Director in the impugned order on this issue are reproduced below:

"A.4.11 I find from the provisions that the goods which constitute 'waste or scrap' (capital goods on which CENVAT credit availed) has not been defined in the statutory provisions. **Considering the fact that the capital goods in question were removed as a complete unit (identifiable as purchased) and also looking to the fact that the capital goods in question (especially batteries) had not completed the active life (as per the brochure of one of the leading manufacturer as per the SCN), the capital goods considered as 'scrap or waste' by the Noticee, may or may not be waste or scrap for the purchasers.** The said capital Goods as procured may be of some utility to the buyers in its original form, or, the buyers might have carried out some rectification or improvements on the said removed 'used capital goods' and may have used it for some other purpose (if not suitable for the services being provided by the Noticee). What is simply not of use to the seller cannot be termed as waste or scrap for all purposes. **The items under question should be of no use for the market as a whole to be classified as waste or scrap. The situation here might have been different, if parts**

of the said capital goods after being dismantled and arising as waste or scrap out of wear and tear of the parts had been removed by the Noticee. In absence of any evidence to show that the capital goods in question here were not used or usable for any other purpose, it is difficult to come to the conclusion that the capital goods in question here were in the condition of 'waste and scrap.'

A.4.20. In the present case before me, the capital goods had become obsolete for the Noticee due to the mechanical working of the capital goods in question. The said capital goods are unusable by the Noticee for providing the telecommunication support services. **However, I find that in absence of any evidence that the capital goods in question cannot be used 'definitely for any other purpose'; it becomes difficult to presume that capital goods had become waste and scrap.** As per the submissions of M/s Bharti, the vendors give their report on the health of the capital goods and to the fact that whether the particular capital goods could be efficiently/economically used for the same purpose even after repairing or renovating the same. Further, I also find that as per the Noticee if any asset cannot be repaired and have no alternative use for the Noticee, then such product is classified as obsolete and cleared as 'scrap'. Thus, I find the aspects as per which any capital goods is considered as 'scrap' by the Noticee are:

- (i) the cost of repairs involved i.e. whether it is economically viable to get the capital goods repaired or to purchase new capital goods.
- (ii) whether the particular capital goods has any other alternate use for the Noticee.

A.4.21. **Thus, there is no opinion/certification to the effect that the said capital goods are unusable for any other purpose.** It may be possible that the requirement of the Noticee for usage of the capital goods may have changed over time or the capital goods with wear and tear over the time may be giving less output as required for the services being provided by the Noticee. **In these situations, though the capital goods are waste or scrap for the Noticee, but for**

a buyer of the capital goods, the said capital goods are still usable. In that situation, the capital goods cannot be termed as "Waste and scrap" and may be termed as 'used capital goods' instead. Thus, in my view though the condition in which the capital goods have been removed is not a basic criterion to determine whether the capital goods removed are waste or scrap, but is not of the important criteria in this regard.

(emphasis supplied)

20. The submission of learned counsel for the appellant is that rule 3(5A) of the Credit Rules provides for two different situations and the payment of the amount in these two situations. The first is 'if the capital goods, on which the CENVAT credit has been taken, are removed after being **used**' and the second is 'if the capital goods are cleared as waste and **scrap**'. These two terms **used** and **scrap** have not been defined in the Finance Act. The dictionary meanings of these two terms is:

Term	Oxford Dictionary	Collins Dictionary	Merriam Webster Dictionary
Scrap	things that are not wanted or cannot be used for their original purpose, but which have some value for the material they are made of	no longer wanted for its original purpose but may have some other use.	to abandon or get rid of as no longer of enough worth or effectiveness to retain
Used	that has belonged to or been used by somebody else before	that has been used; secondhand	that has endured use; second-hand

21. It is clear from the aforesaid dictionary meanings that there is a noticeable difference between the two terms **used** and **scrap**. **Used** would mean something which has endured use before, but it can still be used for the same purpose. **Scrap**, on the other hand, would mean something which has been used but

can no longer be used for the same purpose.

22. The Supreme Court in **Valji Khimji** explained the meaning of '**scrap**' in the following manner:

"17. The word "scrap" would ordinarily mean something which cannot be used for the same purpose for which it was being earlier used even after repairing or renovating the same."

23. The Additional Director did notice the meaning of the term **scrap** in the dictionaries, as also the meaning explained by the Supreme Court in **Valji Khimji**, but committed an error in concluding that goods cannot be treated as **scrap** just because they are no longer of any use to the seller, since what is actually required to be seen is whether the goods are of no use for the market as a whole. The meaning of 'scrap' has to be considered in rule 3(5A) in relation to the goods and not the market. If this conclusion of the Additional Director is accepted, then it would be very difficult to consider any goods as scrap since goods may be of some use to some person in the market.

24. Learned authorized representative appearing for the Department submitted that capital goods were removed on invoices mentioning the description as scrap of ACs etc., without breaking them into pieces and the report also does not give any reason as to why the said goods were declared scrap and whether the goods were scrap only for the purpose of the appellant or they could not be used further for any purpose. In fact, the submission is that there is no evidence that the capital

goods in question could not be used even after repairs.

25. It is not possible to accept the contentions advanced by learned authorized representative appearing for the Department.

26. The infrastructure installed by the appellant consists of various items and the following items are relevant for the purpose of the dispute involved in this appeal:

Sl. No.	Items in question
1.	SMPS (switched-mode power supply)
2.	Rectifier Module
3.	Lead Acid Batteries
4.	DG Sets
5.	Air Conditioners
6.	PIU (Power Interface Unit)

27. It is seen that for identification of scrap, a detailed procedure has been described by the appellant. When the capital goods become unworkable after continues use, they are brought to the warehouse of the appellant, where registered outside vendors carry out a health check and issue a health certificate. An analysis is thereafter carried out to determine whether the capital goods can be repaired or new capital goods have to be purchased. It is only when such goods cannot be repaired and have no other alternative use, that they are classified as obsolete and the procedure of clearance as scrap is triggered. A scrap inventory report is then generated which requires approvals at various levels including the approvals of Circle Manager, Circle Operation Management Head, Circle Finance Head. If the Circle recommends that the goods should be scrapped, then it is sent for final approval to the Head Office and it is only when the Head Office approves, that a scrap disposal notice is generated.

28. The appeal contains 'Note for Approval' and the relevant

portions of three of such Notes are reproduced below:

(1)

- 1. Nature of Proposed NFA
"Scrap disposal of 100 SMPS sets which return against Upgrade/ O&M Replacement under obvious scrap category".
- 2. Background (explaining the need):

In Patna warehouse we have identified 100SMPS which have been brought back to warehouse, as SRN, against O&M replacement and thru extra declaration from field request from Apr-13 to Aug'14.

These SMPS were checked by W/h SME and found that these cannot be repaired as they are damage, Ageing, Obsolete and it's major spares like Alarm card, PT Transformer, Mother board and controller found faulty and or missing, they cannot be repaired and are unfit for usage and to be declared as SCRAP.

- 3. Proposal (for which approval required) with recommendation: (PI attach documents as necessary)

It is proposed to declare 100 SMPS as Obvious SCRAP Disposal Process.

(Details enclosed)

	Rating						
Make	2000w	2700w	3000w	3100w	3200w	1800w	Grand Total
Delta	83	122	38				243
Eltek			132	34		10	176
emersion					68		68
exicom			12				12
lineage			70				70
Grand Total	83	122	252	34	68	10	569

- 4. Other Alternatives Considered (PI compare qualitatively as well as commercially, bringing out why the above proposal was chosen):

These Rectifier Modules have no such alternative use in BIL.

(2)

- 1. Nature of Proposed NFA **"Scrap disposal of 534 Battery Banks** (6111 Battery Cells)".
- 2. Background (explaining the need):

We have identified 12816 Battery cells (11279 nos in Patna and 1537 nos in Ranchi warehouse) of different make and rating, as per details attached, which are physically damage or received against O&M replacement after end of their have OCV of <1.2 Vt as checked by warehouse SME and CFT. The replacement of these BBs where approved by O&M SME. All these are obvious scrap or < of 1.2vt and certified by CFT members

So it is propose to declare scrap as per scrap disposal process.

3. Proposal (for which approval required) with recommendation: (PI attach documents as necessary)

It is proposed to declare SCRAP 12816 Nos. battery cells of different makes which have been found not fit for use.
(Details enclosed)

(3)

1. Nature of Proposed NFA

“Scrap disposal of 138 AC sets which return against Upgrade/ O&M Replacement under obvious scrap category”.

2. Background (explaining the need):

In Patna warehouse we have identified 138 nos Scrap ACs which have been brought back to warehouse, as SRN, against Upgrade/ Special Project & O&M replacement request from May-14 to July-14.

These ACs received in SRN are crossing their life more than five years and have high energy consumption and in damage condition, parts like Blower, Coil condencer, Compressure, Suction Pipe and Capiller etc are damage. Blower, fan are missing. Some of these have odd rating or model, with high energy consumption. So inview of the above and as per SCRAP disposal process these ACs are declared as SCRAP. All the ACs have been checked by WH SME and CFT.

3. Proposal (for which approval required) with recommendation: (PI attach documents as necessary)

It is proposed to declare 138 ACs as Obvious SCRAP as per SCRAP Disposal Process.
(Details enclosed)

Make	Qty.	Rating	Location
ACME	124	0.9Tr	Patna
Blue Star	5	0.9Tr	Patna
Synergey	9	0.9Tr	Patna
Grand Total	138		

4. Other Alternatives Considered (PI compare qualitatively as well as commercially, bringing out why the above proposal was chosen):

These ACs have no such alternative use in BIL.

29. There are similar ‘Note for approval’ for scrap disposal 569 Rectifier Module and scrap disposal of 100 PIU and SPMS.
30. The aforesaid ‘Notes for Approval’ indicate that the goods

were checked and it was found as a fact that they were damaged and could not be repaired. It was also found that they were unfit for use, and were required to be declared as scrap. It is for this reason that a proposal with details of the claims was prepared for declaring them as scrap.

31. It is also pertinent to refer to the submissions made by the appellant in response to the show cause. The appellant specifically stated that it had removed **used capital goods** and **scrap** during the period involved in the show cause notice and that the basic difference between the aforesaid two terms is that while removing items as scrap the appellant had indentified the items which were not usable and these items were sold to recyclers who had valid registrations, while items which could be used by the buyers as such or after some repairs/ modifications were treated as used capital goods on which appropriate amount of duty was reversed. It has also been stated in connection with the disposal of used capital goods that the appellant had reversed CENVAT credit amounting to Rs. 26,75,22,045/- during the period involved in the show cause notice. It was, therefore, clarified that whenever the used capital goods were removed, appropriate amount of duty was paid but when the capital goods were removed as scrap, it was not necessary to pay any amount in terms of rule 3(5A) of the Credit Rules. A chart giving details of the items removed as scrap for the period 2013-14 and 2014-15 was provided in the submissions and the same is reproduced below:

Items	2013-14 (in Rs.)	2014-15 (in Rs.)	Grand Total (in Rs.)
Battery	57,836,540	88,292,603	146,129,143
PIU	15,666,031	14,559,659	30,225,690
SMPS	7,994,125	4,864,583	12,858,708
AC	2,178,830	2,008,758	4,187,588
Rectifier		1,136,830	1,136,830
Shelter		1,002,339	1,002,339
Total	8,36,75,527	11,28,27,861	19,65,388

32. The appellant had also provided the list of customers to whom the scrap was sold and the same is as follows:

- “(x) That all the sales of the battery has been made to recycler having valid registration certificate of recycling hazardous waste and all the sales pertaining to SMPS, PIU, AC has been made to recycler having valid registration certificate of recycling E-waste respectively. (Sample copies of certificates attached as Annexure 2)
- (xi) That the list of customers to whom the scrap under dispute has been sold are as under

Vendor	2013-14	2014-15	Total	% of Grand Total	Items	Remarks
K.G. Metalloys	15,511,739	37,186,154	52,697,893	26.82%	AC, Battery, SMPS, PIU	Registration certificate attached
Kaysons Pigments Pvt. Ltd.	13,959,108	23,329,566	37,288,674	18.98%	Battery	Registration certificate attached
Arya Alloys Pvt. Ltd.	27,549,879	3,361,807	30,911,687	15.73%	Battery	

33. It clearly transpires from the aforesaid that when the used capital goods were sold as such or after repairs the amount required to be paid under rule 3(5A) of the Credit Rules was deposited. In fact, the appellant had reversed credit amounting to Rs. 26,75,22,045/-. It is only when they could neither be sold as such nor repaired and were declared as scrap by following the procedure prescribed above, that they were sold.

34. What needs to be noticed is that the goods declared as scrap have been sold by the appellant to companies engaged in scrap management which have a certificate issued to them

by the Principal Environment Commissioner, Rajasthan State Pollution Control Board, for procurement and recycling of scrap under the Hazardous Waste Management Rules. Further, the invoices through which these goods were sold to these companies also describe the good as scrap only. The copies of these certificates and sale invoices were brought on record by the appellant but the Additional Director failed to take notice of the said evidence and observed that no evidence of the goods being 'scrap' was brought on record by the appellant.

35. This finding of the Additional Director that the goods cannot be considered as waste or scrap since no evidence was brought on record to establish that the goods could be used even after repairs for any similar purpose is also perverse as the appellant had brought on record third party reports submitted by the vendors who had, after inspection, given an opinion as to whether the said goods could be repaired or not. The appellant has stated that if the goods could be repaired they were removed as used capital goods and payment in terms of rule 3(5A) of the Credit Rules was made but if the capital goods could not be repaired and were declared as scrap, the appellant had decided to clear them as scrap.

36. The Additional Director also relied upon the definition of scrap as given in Explanation (b) of section 206C of the Income Tax Act, 1961, wherein scrap has been defined as a waste generated out of manufacture or mechanical working of materials and is not usable as such due to breakage, cutting, wear and other reasons.

37. The definition of 'scrap' in the Income Tax Act could not have been resorted to by the Additional Director as it was defined in a different context. The term 'scrap' has been used in the Income Tax in the sense of a waste by-product generated during the manufacturing, but the Credit Rules envisage clearance of capital goods in the form of 'scrap' when the same can no longer be used.

38. This apart, in case a term has not been defined in a particular Statute, reference can always be made to the definition of the said term in dictionaries. For this purpose reliance can be placed on the decision of the Supreme Court in **MSCO Pvt. Ltd.**, wherein the following observations have been made:

"The expression 'industry' has many meanings. It means 'skill', 'ingenuity', 'dexterity', 'diligence', 'systematic work or labour', 'habitual employment in the productive arts', 'manufacturing establishment' etc., But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. **It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject.** Craies on Statute Law (6th Edn.) says thus and page 164:

"In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts." It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the

purposes of that Act alone. "Macbeth v. Chislett (1910) A.C. 220, 223."

39. The dictionary meaning of the terms 'scrap' and 'used' have been reproduced in paragraph 21 of the order and the meaning assigned to the terms 'scrap' by the Supreme Court in **Valji Khimji** has also been reproduced in the paragraph 23 of the order.

40. In any view of the matter, the capital goods cleared as scrap by the appellant undergo an extensive procedure, after which based on the evaluation of a third-party vendor, the goods are declared scrap and sold to scrap management companies who have taken certificates for recycling the said scrap under the Hazardous E-waste Management Rules.

41. Much emphasis has been placed by the Additional Director and the learned authorized representative appearing for the Department on the fact that some of the items were declared as scrap even before the usual shelf life of such claims and without even breaking the items. It may be true that a particular item was declared a scrap before the usual prescribed shelf life of that item, but that would not mean, in view of the detailed procedure undertaken by the appellant for declaring a particular item as scrap, that a particular item cannot be considered as scrap. What has actually to be determined is whether that item can be treated as scrap and it is not material whether the particular item still has a shelf life. The items which were declared as scrap were sold to companies specializing in scrap management and these companies have also been granted a certificate for procurement

and recycling of scrap under the Hazardous Waste Management Rules. The appellant, therefore, could not have undertaken the process of breaking the items and it cannot be urged that these items would not be scrap merely because they have not been broken before disposal.

42. The inevitable conclusion that follows from the above discussion is that the capital goods cleared as 'scrap' by the appellant are scrap and, therefore, the appellant, being an output service provider, was not required to pay any amount in terms of rule 3(5A) of the Credit Rules.

43. Such being the position, it is not necessary to examine the contention advanced by learned counsel for the appellant that the extended period of limitation could not have been invoked in the facts and circumstances of the present case.

44. The impugned order dated 31.08.2016 passed by the Additional Director, therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed. The amount earlier paid by the appellant and which has been appropriated in the impugned order shall be refunded to the appellant with applicable rate of interest.

(Order Pronounce on **31.01.2022**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)