

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. I

Excise Miscellaneous Application no. 50321 of 2022

in

Excise Appeal No. 50687 of 2020

[Arising out of the Order in Appeal-RPR-EXCUS-000-APP-079-19-20, dated 30.09.2019 passed by Commissioner (Appeals), CGST, Central Excise & Customs, Raipur]

**The Principal Commissioner, CGST &
Central Excise, Customs- Raipur**

Central Excise Building,
Dhamtari Road,
Tikrapara
Raipur (C.G.)

..... Appellant

Versus

Bajrang Power & Ispat Ltd.

Village-Taraimal,
Post-Gerwani,
Tehsil Gharghoda-
Raigarh, Chattisgarh

..... Respondent

APPEARANCE:

Shri Mukesh Kumar Chavda, Authorised Representative for the
Department

Ms. Parul Sachdeva, Advocate for the Respondent

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51704/ 2023

Date of Hearing/Decision: December 22, 2023

PV SUBBARAO

The Order in appeal¹ dated 30.09.2019 passed by the
Commissioner (Appeal) whereby the order in original passed by the
Additional Commissioner has been set aside and assessee's appeal was
allowed is challenged by the Revenue in this appeal.

1 Impugned order

2. The brief facts of the case are that the respondent assessee manufactures sponge iron and avails cenvat credit on the inputs and input services used in its manufacture. During the process of manufacture of sponge iron ore, iron fines emerge which are also sold by the respondent in the market. The case of the Revenue is that the iron ore fines are not excisable and no excise duty is paid on them. Therefore, the respondent was required to maintain separate records for manufacture of sponge iron and iron ore fines in terms of Rule 6(1) of the Cenvat Credit Rules, 2004². Since the respondent failed to maintain separate records, it was required to deposit an amount equal to 6% of the value of the iron ore fines under Rule 6 (3) of CCR. Accordingly, a show cause notice dated 26.04.2016 was issued to the Respondent proposing to recover the amount under Rule 14 of CCR along with interest. It was also proposed to impose a penalty under Rule 15 of CCR upon the appellant. These proposals along with those in another show cause notice dated 03.12.2018 were confirmed by the Additional Commissioner in his order dated 26.03.2019. Aggrieved, the respondent appealed to the Commissioner (Appeals) who, by the impugned order, set aside the demand along with interest and penalty. Revenue is aggrieved by this order of Commissioner (Appeals) and filed this appeal.

3. We have heard learned authorised representative for the Revenue and learned counsel for the respondent and perused the records. The short question which arises in this case is whether or not the respondent was required to deposit an amount equal to 6% of the value

² CCR

of the iron ore fines under Rule 6(3) of the CCR. According to the learned authorised representative for the Revenue, iron ore fines were not chargeable to excise duty and no duty was paid by the respondent. Under Rule 6 of the CCR, Explanation 1 was added which was applicable during the relevant period which reads as follows:

"For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory."

4. Learned authorised representative asserts that in view of the above explanation, if no excise duty is payable on the iron ore fines and even if the iron ore fines were not excisable at all, Rule 6 applies and, accordingly, the respondent was required to maintain the separate records as per Rule 6(1) for the inputs used in the manufacture of dutiable and exempted/non-excisable goods. Since the respondent had failed to do so it was required under Rule 6(3) of CCR to pay 6% of the value of the iron ore fines. The Commissioner (Appeals) has erred in setting aside the demand which needs to be confirmed.

5. Learned Counsel for the respondent submits that the same issue had come up in the respondent's own case before this Tribunal for a different period in Excise Appeal no. 53729 of 2018 and by decision dated 23.05.2019 this Tribunal, relying upon the earlier decision dated 19.12.2018 in the case of Bhagwati Power & Steel Ltd. vs CCE & ST, Raipur³ set aside the demand on the ground that the iron ore fines is not manufactured at all but is a residue and, therefore, the provisions of Rule 6 of the CCR are not attracted. She also relies on the decision of

3 2018 SCC OnLine CESTAT 9900

Hyderabad bench of this Tribunal in the case of BIOP Steels and Power Pvt. Ltd.⁴ in which also it has been held that no amount as a percentage of the value of iron ore fines needs to be deposited under Rule 6 (3) of Cenvat Credit Rules. She, therefore, prays that there is no force in appeal of the Revenue and it may be dismissed.

6. We have considered the submissions from both sides and perused the records. The case of the Revenue is that iron ore fines are manufactured and if they are not excisable or are exempted, Rule 6 of CCR would apply and the respondents were liable to pay amount equal to 6% of the iron ore fines under Rule 6(3) of the Cenvat Credit Rules. The case of the Respondent is that it does not manufacture the iron ore fines at all and they emerge as a by-product in the manufacture of its main product, namely, sponge iron and, accordingly, Rule 6 of the Cenvat Credit Rules would not apply. We find that this issue is no longer res integra and in the respondent's own case by final order dated 23.05.2019 it has been held by this Tribunal that the Respondent need not deposit the amount equal to 6% under Rule 6(3) of the CCR.

7. The amendment made by way of explanation to Rule 6 makes no difference because the question is not if the goods are non-excisable or excisable but exempted but whether the iron ore fines are manufactured or not and this Tribunal has consistently held that the iron ore fines are not manufactured but only emerge during the process of manufacture of sponge iron. Accordingly, we find no force in the appeal by the Revenue. The appeal is, accordingly, dismissed and the

⁴ Final order no. A/30193-30195/2023 dated 26.07.2023 of CESTAT, Hyderabad

impugned order is upheld. The Miscellaneous application, accordingly, also stands disposed of.

(Dictated and Pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Diksha