CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH - COURT NO. I

Excise Appeal No. 52942 of 2019

[Arising out of the Order in Appeal–RPR-EXCUS-000-APP-0068-19-20, dated 18.09.2019 passed by Commissioner (Appeals),CGST, Central Excise & Customs, Raipur]

The Principal Commissioner, CGST & Central Excise, Customs- Raipur **...... Appellant**
Central Excise Building,
Dhamtari Road,
Tikrapara
Raipur (C.G.)

Versus

Singhal Enterprises Pvt Ltd **...... Respondent**
Village-Taraimal,
Post-Gerwani,
Tehsil Gharghoda-
Raigarh, Chattisgarh

APPEARANCE:
Shri Mukesh Kumar Chavda, Authorised Representative for the Department
None for the Respondent

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

FINAL ORDER NO. 51703/ 2023

Date of Hearing/Decision: December 22, 2023

PV SUBBARAO

The Order in appeal[1] dated 18.09.2019 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, 2004[2]. 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. None appeared on behalf of the respondent. We have heard learned authorised representative for the Revenue 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

---

2 CCR

value 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. We have considered the submissions of Revenue 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 case of Ghankun Steel 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 impugned order is upheld.

(Dictated and Pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Diksha