# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# NEW DELHI
# PRINCIPAL BENCH, COURT NO. 4

**EXCISE APPEAL NO. 55403 OF 2023**

[Arising out of order in Appeal No.IND-EXCUS-000-APP-22-2023-24 dated 25.04.2023 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Indore]

**H D WIRES PVT LTD**
Plot No.17-20, Sector-E,
Industrial Area,
Sanwer Road, Indore (M.P.) **Appellant**

Vs.

**COMMISSIONER OF CENTRAL EXCISE & CGST-INDORE** **Respondent**
Manik Bagh Place,
Indore (M.P.)-452014

**Appearance:**
Present for the Appellant :Mr. Raj Kumar Ambwani, Tax Consultant.
Present for the Respondent:Mr. Mahesh Bhardwaj, Authorised Representative

**CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER ( JUDICIAL )**

**Date of Hearing/ Decision** : **28/02/2024**

**FINAL ORDER NO.54536/2024**

**DR. RACHNA GUPTA**

The appellant in the present case is engaged in manufacture of G.I. wire, barbed wire etc. During the scrutiny of returns of the appellant during the period April, 2016 to June, 2017, Department observed that the appellant has, apart from the manufacturing dutiable goods has also cleared zinc dross, the exempted goods. With these observations, the appellant was proposed to have paid duty to an amount equivalent to 6% of the value of non-excisable/exempted goods in terms of Rule 6 (1) read with Rule 6 (3) of Cenvat Credit Rules, 2004. Based on those observations a Show Cause Notice No.29 dated 26.05.2020 was served upon the appellant proposing a demand of Rs.4,78,599/- to be recovered from the appellant alongwith the proportionate interest and the appropriate penalties. The proposal was initially confirmed vide Order-in-Original No. 10/21-22 dated 07.03.2022. The appeal against the said order has been rejected vide the Order-in-Appeal No.22-2023-24 dated 26.04.2023. Still being aggrieved, the appellant is before this Tribunal.

2. I have heard Mr. Raj Kumar Ambwani, ld. Counsel for the appellant and Mr. Mahesh Bhardwaj, ld. Departmental Representative for the Revenue.

3. Ld. Counsel for the appellant has mentioned that the order under challenge has been passed by mis-interpreting the basic provisions of "Cenvat Credit Rules, 2004" (CCR) and sub rule 6(3) of CCR, 2004. The Explanation (1) was added to Rule 6(1) of CCR, 2004 with effect from 01.03.2015. The same cannot be applied in respect of zinc/ dross/ash/ waste cleared by the appellant for the reason that sub-rule (1) of Rule 6 has not been amended so as to make the zinc dross/ ash residue emerging out of manufacture of dutiable goods. Ld. Commissioner (Appeals) over looked the fact that zinc dross/ash emerges as remaining residue on which appellant claimed exemption being waste. The appellant has no intention to manufacture zinc residue (dross/ash) therefore same cannot be considered as exempted goods manufactured by the appellant. As per settled principle by higher judicial forums including Apex Court, the goods which are not consciously manufactured but which emerges in the process of manufacture cannot be considered as manufactured goods.

4. The zinc dross originates automatically during the galvanization process used by the appellant in the manufacture of its final product. Ld. Counsel has mentioned that the Circular No.1027/15/2016 dated 25th April, 2016 has wrongly been relied upon by the adjudicating authority despite that the said Circular stands already rescinded by the decision of Hon'ble Supreme Court and has in fact being withdrawn by the Department by their subsequent Circular No.1084/05/2022 dated 07.07.2022. The order is therefore, prayed to be set aside and appeal is prayed to be allowed.

5. While rebutting these submissions, ld. D.R. has mentioned that the zinc dross cleared by the appellant is a product manufactured by the appellant as it emerges in the process of the manufacture of final product by the appellant. It is also mentioned that subsequent to the decision of Hon'ble Supreme Court in the case of **Union of India vs. M/s. DSCL Sugar Ltd. reported as 2015 (322) E.L.T. 769 (S.C.),** the Circular of 2016 dated 25.04.2016 still recites that the dross need to be treated like the exempted goods. Hence while relying upon the said Circular, Commissioner (Appeals) has committed no error. Impressing upon no infirmity in the order, appeal is prayed to be dismissed.

6. Having heard both the parties and perusing the record, it is observed that the only issue in the present appeal to be adjudicated is:

Whether zinc dross which emerged during the manufacture of final product of the appellant, due to the galvanizing process involved in the said manufacturing process, is to be treated as an exempted goods manufactured by the appellant. I observe that the issue is no more *res-integra*. It was initially taken up by High Court of Mumbai in the case of **M/s. Hindalco**

**Industries Ltd. vs. Union of India reported as 2015 (315) ELT 10 Mumbai** wherein it was held that the dross and skimming of aluminium, zinc or other non-ferrous metals since emerges as waste, that the zinc dross and zinc ash cannot be treated as excisable commodities. Subsequent to the said decision, the Hon'ble Supreme Court had again took up the issue in the case of **Union of India vs. M/s.DSCL Sugar Ltd reported as 2015 (322) ELT 769** holding that the waste products (Baggasse in the said case) emerging during the manufacturing process of the final product are not the outcome of any process which can be termed as manufacture. Thus, such waste products cannot be categorized as exempted goods. Hence question of applicability of Cenvat Credit Rules does not at all arise. Despite the said decision though the Circular of 25.04.2016 was issued by the Department by still treating the Baggasse / dross /waste products/ byproducts etc. as the exempted goods. The relevant para is para 4.2 of the said Circular which is reproduced below:-

> *"4.2 Consequently, Baggasse, Dross and Skimmings of non-ferrous metals or any such byproduct or waste, which are non-excisable goods and are cleared for a consideration from the factory need to be treated like exempted goods for the purpose of reversal of credit of input and input services, in terms of rule 6 of the CENVAT Credit Rules, 2004."*

7. The Circular was again challenged before the Hon'ble Supreme Court in the case of **Union of India vs. Indian Sucrose Limited in SLP (C) No. 1700/2021 decided on 04.03.2022** vide which while reiterating its own observation given in the case of Union of India vs. M/s.DSEL Sugar Ltd supra, it was held that the waste products arising out of manufacturing

processes are non-excisable goods to which Cenvat Credit Rules have no application. Circular dated 25.04.2016 was held unsustainable in law. Subsequent to the said decision that Department also came up with another Circular No.1084/2005 dated 07.07.2022 rescinding the Circular of 25.04.2016 in the light of decisions of Hon'ble Supreme Court.

8. Commissioner (Appeals) in the present case is observed to still have followed the said rescinded Circular dated 25.04.2016. The said act of the adjudicating authority not merely amounts to mis-interpretation of the provision, but it amounts to the violation of statutory principles, the circular dated 07.07.2022 being binding upon him. The ignorance of law laid down by the Hon'ble Supreme Court is a condemnable act of judicial indiscipline.

9. Resultantly, the order passed by the Commissioner (Appeals) is held not sustainable and the same is hereby set aside. Copy of the order be sent to the Central Board of Indirect Taxes & Customs with the liberty to the Board may take action appropriate as deemed fit against Commissioner (Appeals). With these findings the appeal stands allowed.

[Dictated & pronounced in the open Court]

**(DR. RACHNA GUPTA)**
**MEMBER ( JUDICIAL )**

Anita