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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. E/2301, 2302, 2303 AND 2348 / 2007 -SM[BR] Date 15/02/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :

1. M/S JAI STEELS (INDIA)
F-289(A), MIA, BASNI PHASE-II, JODHPUR(RAJ)

[2] M/S SHIVA STEELS [UNIT-II]
C-237, MIA, BASNI PHASE-II JODHPUR[RAJ.]
[3] M/S SUNCITY METALS[P] LTD.
E-422, MIA, BASNI PHASE-II,JODHPUR[RAJ.]
[4] M/S SHIVA STEELS [UNIT-II]
JODHPUR C-237, MIA, BASNI
PHASE-II JODHPUR[RAJ.]

M/S JAI STEELS (INDIA) Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 217 – 220 / 2010 –SM[BR] dated 2.2.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
MR.OM P.AGARWAL & CO.
56, SECTION 7, N.P.H ROAD, JODHPUR(RAJ)
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 2.2.2010

Central Excise Appeals No.2301, 2302, 2303 of 2007

Arising out of the order in appeal No.334/HKS/CE/JPR-II/07, 333/HKS/CE/JPR-II/07 and 335/HKS/CE/JPR-II/07 all dated 29.5.2007 passed by the Commissioner (Appeals II) , Customs & Central Excise, Jaipur

Central Excise Appeal No.2348 of 2007

Arising out of the order in appeal No.346/HKS/CE/JPR-II/07 dated 31.5.2007 passed by the Commissioner (Appeals II) , Customs & Central Excise, Jaipur

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

1. M/s Jai Steels (India)
2. M/s Shiva Steels (Unit-II)
3. M/s Suncity Metals (P) Ltd.
4. M/s Shiva Steels (Unit-II)

... Appellants

Vs.

Commissioner of Central Excise
Jaipur II ... Respondent

Appearance:

Shri O.P. Agarwal, Chartered Accountant for the appellants
Shri R.K. Saini and Shri S.K. Bhaskar, Authorized Departmental Representatives (JDRs) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Final Oral Order No. 217-220, SM-(BR)

Per M. Veeraiyan:

Appeals No.E/2301, 2302, 2303/2007 arise out of common order in appeal Nos. 333 to 335/HKS/CE/JPR-II/07 of Commissioner (Appeals) dated 29.5.2007 involving three different appellants. Appeal No.E/2348/2007 arises out of the order in appeal No.346/HKS/CE/JPR-II/07 dated 31.5.2007 passed by the Commissioner (Appeals) which set aside the order of the original authority which was in favour of the party.

2. All these appeals involve common facts and law and accordingly, they are being dealt with by a common order.

3. Heard both sides.

4.1 The manufacturing process as submitted by Shri O.P.Agarwal, learned Chartered Account for the appellants , in brief, are as follows:

The appellants use SS flats as primary raw materials for manufacture of cold rolled patta patti falling under sub-heading 7219.90. The process SS flats are cut into pieces of required sizes; they are subject to process of annealing by putting them in oil fired furnace which results in softening the material for the purpose of rolling; the hot annealed flats are subject to hot rolling in rolling machine. After the process of hot rolling, they are subject to a process known as pickling that is dipping the product in a mixture containing different acids such as sulphuric acid, nitric acid hydrochloric acid and water with a view to remove the extra carbon deposit. The said hot rolling process may be repeated when thinner cages of the end-product is required. The said hot rolling products are further subject to cold rolling by passing them through rollers to obtain patta/patti of the desired thickness. The cold rolled products are also subject to pickling but using different combination of pickling mixture. The final product arising out of cold rolled processes require to be trimmed by cutting rough edges. In the entire process of hot rolling and cold rolling, certain portions of the materials get wasted. Mostly, waste arises during the process of cold rolling with the material when the material gets jammed between the rollers.

4.2 The said scrap is being treated by the Department as SS scrap and sought to be classified under sub-heading 7204.21 which attracted nil rate of duty as per the tariff till 28th February 2005 and thereafter exempted by Notification No.3/2005-CE dated 24th February 2005. In Appeals No.2301, 2302 and 2303/2007, the original authority held that the appellants are manufacturing dutiable SS cold rolled patta/patti and exempted SS scrap and that they have not maintained separate accounts in respect of SS flats which go into manufacture of exempted SS scrap and therefore, they are required to pay the amounts in terms of Rule 6(3)(b) of Cenvat Credit Rules, 2004. Accordingly, he confirmed the duty and interest and imposed penalties. The orders of the original authority stand upheld by the Commissioner (Appeals).

4.3 In Appeal No.E/2348/2007, the original authority dropped the proceedings. On appeal by the Department, the Commissioner (Appeals) held that Rule 6(3)(b) of Cenvat Credit Rules is applicable and confirmed the duty demand along with interest and imposed penalty.

5.1 Learned Chartered Accountant for the appellants after narrating the process of manufacture submits that they were not intending to manufacture scrap; the entire SS flats used as raw materials were used fully in connection with the manufacture of SS cold rolled products and the arising of scrap is incidental to the manufacture of SS cold patta/patti. No amount of SS flats can be attributed as exclusive inputs meant for the manufacture of the scrap which arises as a by-product unintentionally. He relies on the various decisions particularly the decision of the Hon'ble High Court of Bombay in the case of Rallis India Ltd. vs. UOI reported in 2009 (233) ELT 301 (Bom.); the decision of the Tribunal in the case of Assistant Commissioner of Customs & C.Ex., Vishakhapaatnam vs. Hygrade Pallet Ltd. reported in 2010 (249) ELT 266 and the decision of the Tribunal in the case of Narmada Gelatines Limited vs. C.C.E., Bhopal reported in 2009 (233) ELT 332.

5.2 He also submits that in respect of 3 appeals, part of the demand is time barred as the appellants have not suppressed any relevant materials.

He also submits that the issue involved relates to interpretation of Cenvat Credit Rules and the question of imposition of penalties does not arise.

6. Learned DR reiterated the finding and reasoning of the Commissioner (Appeals). It was also submitted that there is no provision akin to Rule 57D of the Central Excise Rules, 1944 disallowing the credit in respect of input which has gone into waste and refuse or by-product arising out of manufacture of dutiable products. Therefore, he seeks upholding the order of the Commissioner (Appeals). He further submits that the decision relied upon by the learned Chartered Accountant relates to waste and does not specifically deal with the scrap.

7. I have carefully considered the submissions from both sides and perused records. Undisputedly, the entire inputs namely, SS flats stand utilised for the intended purpose namely, manufacture of SS cold rolled patta/patti. It is not the case that some portions of SS flats were exclusively used for the manufacture of cold rolled patta/patti and some other portions are exclusively used for manufacture of SS scrap. In other words, in the present case, it cannot be said that the inputs have not been used for manufacture of dutiable final products namely, SS cold rolled patta/patti. Similar issue has been considered by the Tribunal in the case of Narmada Gelatines Limited and it was held that when the entire material stands utilised in the manufacture of dutiable final product, the question of denying credit attributable to notionally arrived credit for the inputs going into the exempted by-product does not arise. The relevant portion of the order is reproduced below:

> ***"9. In view of the above, we hold that the entire hydrochloric acid stands used in the composite process at the initial stage and therefore, it cannot be denied that the entire quantity is used in relation to the manufacture of the dutiable products; it is not possible to use lesser quantity of hydrochloric acid to obtain the same quantity of gelatine; the product DCP, EDCP which arise out of treatment of mother liquor as per the Pollution Control Regulations has to be treated as by-products; no amount of hydrochloric acid has been exclusively used in the manufacture of exempted products; the exempted by-products do not contain any part of hydrochloric acid as an input; hydrochloric acid as an input was eligible for credit; and that maintenance of separate account is neither feasible nor warranted. The ratio of Swadeshi Polytex Ltd., is squarely applicable to the facts of the present case".***

8. The decision of the Hon'ble High Court of Bombay overruling the Larger Bench decision in the case of Rallies India Ltd. has held as under:

> " ***2. The question referred to the Larger Bench was :-***
>
> ***'Whether 8% of the amount as per erstwhile Rule 57CC of Central Excise Rules, 1944 (now Rule 6 of Cenvat Credit Rules, 2002) is required to be discharged, before removal of by products/subsidiary products when such products are exempted from whole of duty therein in light of the conflicting view in the above decisions.'***
>
> ***The Larger Bench of the Tribunal concurred with the views expressed by the Tribunal in the case of Binani Zinc Ltd. (supra) and by the impugned decision held that the petitioner who manufactured both dutiable and exempted final products by utilizing duty paid common inputs (Modvat credit of which was taken) was liable to pay an amount equal to 8% of the value of the exempted final product under Rule 57CC of Central Excise Rules, 1944/Rule 6 of Cenvat Credit Rules, 2002. The Larger Bench has also recorded a finding to the effect that HCL was not a necessary input required in the manufacture of gelatin.***
>
> ....
>
> ***27. The fact that the waste mother liquor arising in the manufacture of gelatin was further processed to manufacture exempted phosphoryl 'A' and 'B' would not attract Rule 57CC, because, if Rule 57CC was not applicable at the time of clearance of the waste mother liquor arising in the manufacture of dutiable gelatin, then the said rule cannot be applied merely because mother liquor was further processed to manufacture exempted final product, namely, phosphoryl 'A' and 'B'. In other words, liability to pay the presumptive amount under Rule 57CC would arise only if the waste mother liquor is held to be a final product. It is not even the case of the revenue that the waste mother liquor arising in the manufacture of gelatin is a final product. Therefore, in the facts of the present case, if Rule 57CC was not applicable at the time of clearance of waste mother liquor, then Rule 57CC would not apply at the time of clearance of the exempt phosphoryl 'A' and 'B' manufactured out of waste mother liquor.***
>
> ....
>
> ***33. For all the aforesaid reasons, we find it difficult to sustain the decision of the Tribunal in the case of Binani Zinc Limited (supra) which is approved by the Larger Bench".***

9. In other words, in the present case, it is not the case of manufacture of two distinct products, one exempted and the other dutiable wherein some part of the inputs go for manufacture of final dutiable product and the rest of the inputs go used for manufacture of exempted product. Waste and the scrap have arisen in an integrated process and the entire inputs of SS flats stands utilised for the purpose of manufacture of SS cold rolled patta/patti. This fact is not in dispute. The scrap has arisen only as a by-product. The ratio of the

decision of the Tribunal in the case of Narmada Gelatines Limited and the decision of the Hon'ble Bombay High Court in the case of Rallies India Limited will apply to the facts of the present case.

10. In view of the above, the orders of the Commissioner (Appeals) are set aside and the appeals are allowed with consequential relief as per law.

(M. Veeraiyan)
Member (Technical)

scd/