IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. E/58733/2013-EX(DB)

[Arising out of Order-in-Appeal No. 29/RPR-I/2013 dated 17.05.2013, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Raipur].

M/s. Monnet Ispat & Energy Ltd. ....Applicants

Vs.

C.C.E. Raipur ....Respondent

Appearance:

Shri K.K. Gupta, Advocate for the Appellant
Shri R.K. Manjhi, DR for the Respondent

<u>CORAM</u>:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of Hearing: 16.02.2017

FINAL ORDER NO. <u>52248/2017</u>-EX(DB)

<u>Per Archana Wadhwa:</u>

The facts, briefly stated, are that the Appellants are engaged in the manufacture of sponge iron from iron ore and use coal both as a reducing agent as well as for supplying heat. As combustion of coal is not allowed to be complete as a requirement of the manufacturing process, a residue namely "Char Fines/Lumps" is generated which fetches value on being sold. The appellants have not been paying duty on such char fines/lumps. The Order-in-Appeal has held that the said product is excisable goods specially in the wake of the amendment to clause (d) of Section 2 of Central Excise Act, 1994 in the form of an explanation that for the purpose of the said clause "Goods include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable".

2. Accordingly proceedings were initiated for confirmation of demand of Rs. Rs. 2,30,593/- along with interest and equal penalty in respect of "Char Fines / Lumps" cleared by the appellant during the period March 2010 to October 2011. The proceedings resulted in passing of present impugned orders.

3. After hearing both the sides, duly represented by Shri K.K. Gupta, Advocate for the Appellant and Shri R.K. Manjhi, DR for the Respondent we note that the issue is no more res integra. In the case of ***UOI Vs. Ahmedabad Electricity Company Ltd. 2003 (158) ELT 3 (SC)*** it was held that Cinder which is partly burnt coal, even though sold for a price is not excisable. Further, Hon'ble High Court of Allahabad in the case of ***Laxmi Agro Indl. Consultants & Exporters Ltd. Vs. CCE Noida 2011 (274) ELT 176 (All)*** has held that for taxing a product the same should be final product and not by-product / waste emerging in the process of manufacture. Further, following the Hon'ble All High Court decision in the ***writ petition no. 11791 (M/B) of 2010 in the case of Balrampur Chini Mills Ltd. Vs. UOI,*** the Tribunal has observed in the case of ***Bajaj Hindustan Ltd. Vs. CCE Meerut 2013 (290) ELT 251 (Tri-Del)*** that bagasse and press mud are not excisable even after the amendment of Clause (d) of Section 2 of the Central Excise Act.

4. In fact, we note that Commissioner (A) in the appellant's own case for the subsequent period has dropped the demand raised in

respect of the identical product by following the Tribunal's decision in the case of ***Haryana Steel & Power Ltd. Vs. CCE Mysore 2015 (325) ELT 400 (Tri Bang.).*** For better appreciation the relevant part from the said order of Commissioner (A) is reproduced below:

> *"8. The appellant has contested the said confirmation of demand of central excise duty on the ground that the char fines / lumps generated as residual unburnt coal wastage during the manufacture of Sponge Iron is not excisable goods and have relied on the several cases, as above. It is observed that the identical issue has been declared by the Hon'ble CESTAT in the case of Haryana Steel & Power Ltd. Vs. CCE Maysore 2015 (325) ELT 400 (Tri Bang), wherein it has been held that emergence of slag as by-product or waste during manufacture of sponge iron cannot be termed as amounting to manufacture of slag even after amendment in Section 2(d) of the Central Excise Act 1944. The relevant paras of said decision are reproduced below:*
>
> > *"5. After carefully considering the submissions made by both sides, I find that only difference in the facts of the present case and the decisions relied upon by the learned advocate is the addition of Explanation to Section 2(d) of the Central Excise Act, w.e.f 10-5-2008. However, I find that the Board's Circular No. 904/24/2009-CX., dated 28-10-2009 strongly relied upon by the lower authorities stands struck down by the Hon'ble Allahabad High Court in the case of Balrampur Chini Mills Ltd. v. UOI reported as 2014 (300) E.L.T. 372 (All.). Further, vide a recent decision, the Hon'ble Bombay High Court in the case of Hindalco Industries Ltd. - 2015 (315) E.L.T. 10 (Bom.) has set aside the Larger Bench decision of the Tribunal reported at 2014 (308) E.L.T. 472 (Tri.-LB) and has observed that the amendment in Section 2(d) will not change the scenario inasmuch as the manufacture of waste, refuse, scrap, etc., cannot be*

> *considered to be manufactured items in terms of Section 2(f) of the Central Excise Act.*
>
> *5.1 In view of the above, I am of the opinion that the amendment in Section 2(d) has not changed the scenario. Accordingly, the law declared in the above decisions of the Hon'ble Supreme Court and the Hon'ble Bombay High Court would apply, read with the decisions of the Hon'ble Allahabad High Court. The impugned orders are accordingly set aside and both the appeals are allowed with consequential relief to the appellants."*

9. Further, the Hon'ble Apex Court in the case of UOI vs. DSCL Sugar Ltd. 2015 (322) ELT 769 (SC) has held that merely that the goods are classifiable under Chapter heading of Central Excise Tariff and capable of being sold cannot be held to be excisable, until it has arisen as a result of manufacture as defined under rule 2(f) of the Central Excise Act, 1944. Having accepted this decision, the Board vide its Circular no. 1027/15/2016 dated 25.04.2016, has rescinded its earlier Circular no. 904/24/2009 dated 28.10.2009, no. 941/02/2011 dated 14.02.2011 and instruction F.No. 17/02/2009 dated 12.11.2014, which was regarding excisability of bagassee, aluminum / zinc dross. However, in para 4.2, the Board has clarified that "Consequently, Bagassee, Dross and skimmings of non-ferrous metals or any such by-product 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 or credit of input and input services, in terms of rule 6 of the Cenvat Credit Rules 2004 which is in accordance with the amended Rule 6 of the Cenvat Credit Rules 2004, effected from 01.03.2015. I find that in the instant case the dispute is regarding non-payment of central excise duty on char fines / lumps and not regarding reversal of credit of input and input services, in terms of rule 6 of the Cenvat Credit Rules, 2004, and therefore, the clarification given in para 4.2 of Board's circular dated 25.4.2016 is not applicable in this case.

10. In view of the above decisions and Board's clarification, I hold that 'char fines / lumps' arise as a waste during the manufacture of Sponge Iron are not excisable and therefore, the confirmation of demand of central excise duty Rs.10,69,236/- is not sustainable, on merit. The submission of the appellant is convincing and also the case laws cited by them are applicable in the instant case. Further, since the demand of central excise duty in itself is not sustainable, the question of recovery of interest and imposition of penalty does not arise. The impugned order is set aside. Held accordingly."

5. We are informed that the said order of Commissioner (A) stand accepted by the Revenue and no further appeal stand filed by them.

6. As such it may be safely concluded that the disputed issue has attained finality at the Departmental level also. In view of the foregoing, we find no justification in upholding the impugned order. The same is accordingly set aside and appeal allowed with consequential relief to the appellant.

[Operative part of the order Pronounced in the open Court]

(B. Ravichandan)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Bhanu