CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 189 of 2012

(Arising out of Order-in-Appeal No. 273(DKV)CE/JPR-I/2011 dated 13.10.2011 passed by the Commissioner (Appeals) Customs & Central Excise, Jaipur)

DATE OF HEARING : 27.03.2017
DATE OF DECISION : 27.03.2017

M/s Agarwal Metals …. **Appellants**
(Rep by Ms. Rinky Arora, Adv.)

VERSUS

CCE, Jaipur-I …. **Respondent**
(Rep. by Sh. H.C. Saini, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 52607/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed against the Order-in-Appeal No. 273(DKV)CE/JPR-I/2011 dated 13.10.2011 passed by the Commissioner (Appeals) Customs & Central Excise, Jaipur. The period in dispute is January 2008 to November 2008.

2. The brief facts of the case are that the assessee-Appellants, during the period under consideration, were engaged in

the process of cleaning, anodizing, electroplating, power coating etc. on copper, aluminium, steel, brass pipes & tubes, and cleared scrap generated during the course of manufacture of products like rosette, brackets & curtain fittings and the process undertaken is that of manufacture. So, the assessee-Appellants were permitted to avail Cenvat Credit. Apart from the manufacture of these items, the assessee-Appellants were manufacturing aluminium rails and tracks for curtain rods by the process of cutting, punching, anodizing which, according to the Department, was not the process of manufacture. During the course of manufacture of rails as also brackets and other curtain fittings, scrap were generated which, the assessee-Appellants had cleared on payment of duty. The Department was of the opinion that the scrap generated by the process of cleaning, anodizing, electroplating, power coating on copper, aluminium, steel, brass pipes and tubes did not amount to manufacture as per Section 2(f) of the Central Excise Act, 1944. Being aggrieved, the assessee-Appellants have filed the present appeals.

3. With this background, we have heard Ms. Rinky Arora, learned counsel for the assessee-Appellants and Shri H.C. Saini, learned DR for the Department.

4. After hearing both sides and on perusal of the records, we find that an identical issue has come up before this Tribunal in the assessee-Appellants' own case in Appeal No. E/510/2008 and the Tribunal vide Final Order No. 51854/2016 dated 16.05.2016 has observed that :

"2. Though the appellant have pleaded that processes undertaken by them amounts to manufacture, but we find that appeal can be disposed of even by considering the said process as not manufacture as held by the Revenue. The Tribunal in the case of Rico Auto Industries Ltd. Vs. CCE New Delhi-2003 (57) RLT 653 (CEGAT-Del), has held that even if the processes undertaken by the assessee do not amount to manufacture, credit of duty paid on the inputs would still be admissible on export of the said processed input in terms of provisions of Rule 57F(2) and Board's circular 283/117/96-CE reported in 1997 (18) RLT M27.

3. In fact, we find that commissioner (A) has not disputed applicability of the said decision to the legal issue involved in the present case but has not followed the same by observing that the same stands appealed against by the Revenue. Nothing has been shown to us to the effect that the said decision of the Tribunal stands set aside by any higher appellant forum. In fact, we take note of another decision of the Tribunal in the case of R.F.H. Metal Castings (P) Ltd. Vs. CCE Jaipur-2010 (253) ELT 428 (Tri-Del) to the same effect."

5. By following our earlier order (supra), we find no merit in the impugned order and the same is hereby set aside.

6. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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