**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.**

Date of Hearing/Order: 1.5.2017

Appeal No. E/52463/2015-SM

(Arising out of Order-in-Original No. UDZ-EXCUS-000-COM-0014-14-15 dated 25.3.2015 passed by the Commissioner, Central Excise, Jaipur)

M/s Hindustan Zinc Ltd. Appellant

Vs.

CCE, Jaipur Respondent

Appearance

Shri Dhruv Tiwari, Advocate - for the appellant

Shri G.R. Singh, D.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 53167/2017

Per Ashok K. Arya :

M/s Hindustan Zinc Ltd. is in appeal against the Order-in-Original No. 14/2015 dated 25.3.2015 passed by Commissioner whereunder inter alia demand of Central Excise duty of Rs.22,67,698/- has been confirmed.

2. The brief facts are that:

(i) The appellant is a manufacturer of lead and zinc concentrates falling under Chapter 26 of Central Excise Tariff and is engaged in export of such goods under Bond.

(ii) The Concentrates so manufactured are moist in nature which are measured as WMT (Wet Metric Tonne). However, the value and duty for the said Concentrates are determined with reference to actual quantity (without moisture), which is measured as DMT (Dry Metric Tonne).

(iii) The said concentrates are transported to Kandla port and unloaded in open plots, where the goods subject to atmospheric conditions and changes. Because of this, wet concentrates, which generally contains 8-10% moisture gradually dries upto around 4 to 5% just before the loading into ship/vessel.

(iv) Because of drying of moisture and consequent reduction in weight, the WMT quantity shipped falls short of WMT quantity mentioned in AR-4 forms, though actually total DMT quantity cleared under AR-4 form from the factory stands shipped.

(v) Considering the mismatch of quantity in WMT mentioned in AR-4 form and WMT quantity cleared and shipped (done at port), the department found that there was short shipment/export of Concentrates (goods) of the certain quantity of the zinc and lead concentrate with reference to the goods cleared from the factory for export under Bond. On this account, the department issued a Show

Cause Notice dated 15.10.2001 for the demand of Central Excise duty of Rs.37,63,187/- and it was confirmed by the earlier Order-in-Original No. 17/2002 dated 10.9.2002.

(vi) This said Order-in-Original dated 10.9.2002 was appealed before CESTAT, which vide its Final Order No. 257/2005-NB(C) in Appeal No. E/2961/2002 dated 24.2.2005 remanded the matter to adjudicating authority with the following observations:

> *"5. We have heard both sides and gone through the record. From the record, we find that on the same allegations, the duty demand was raised against the appellants for the subsequent period and the Commissioner (Appeals) has dropped the demand by holding that DMT of the concentrates has to be determined at the time of actual shipment because concentrates contained moisture contents, when left the factory and those contents could dry up by the time the goods reached at the port and thereafter also, when dumped in the open yard, till actual shipment. In our view, the matter deserves to be re-examined from this angle by the adjudicating authority and also be taking into account the subsequent order passed by the Commissioner (Appeals), for determining the shortage in quantity of the goods exported by the appellants."*

(vii) Thereafter, the Commissioner again adjudicated vide impugned order No. 15/2002 dated 25.3.2015 inter alia observing that in case of 4-ARE-1s there is no endorsement on reverse side of the ARE-1s regarding unloading of goods/arrival of goods at Kandla port i.e. port of export. The impugned order also says that there are no other documents viz. shipping bills, bill of lading produced by the assessee indicating that the goods reached at Kandla port and further cleared for export under the said ARE-1s. The impugned order inter alia confirmed the demand of Central Excise duty of Rs.22,67,698/-.

3. With the above facts, both sides represented by ld. Counsels Shri Dhruv Tiwari and Shri G. R. Singh have been heard.

4. After having perused the facts of the case and submission of both sides, it appears that the impugned order has raised a new issue saying that there may be possibility that the goods cleared under these ARE-1s have been diverted. This observation is mentioned in the impugned order in respect of four ARE-I mentioned in the table in para 21 of the impugned order.

4.1 The ld. Counsel for the appellant makes a mention that earlier Order-in-Original No. 17/2002 dated 17.1.2002 in its para 11 has referred to the endorsement made by the Custom authorities at the port of export as an evidence of proof of export. The ld. Counsel for appellant also states that all the evidences for export of the subject goods are available with them.

4.2 The ld. Counsel for the Revenue says that in case of subject four ARE-1s remarks of the Customs authorities on the fact of export may not be available during the second fresh proceedings before the Commissioner.

5. Considering above discussion, the matter deserves to be remanded to Commissioner for fresh adjudication, where the appellant shall be given opportunity of personal hearing and submission of relevant documents to prove the fact of export of goods; and thereafter, if there is any discrepancy found in respect of quantity of exports in terms of weight in DMT then only the demand be confirmed against the appellant.

6. In the result, the impugned order is modified to above effect and appeal allowed by way of remand in above terms.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

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