CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 31.07.2017

Appeal No. E/59592/2013-SM

[Arising out of the Order-in-Appeal No. 133 (CE) RPR-I/2013 dated 04/06/2013, passed by the Commissioner (Appeals), Central Excise & Service Tax, Raipur)

Jayaswal Neco Industries Ltd. … Appellant

Vs.

CCE Raipur … Respondent

Appearance:
Present Shri Krishnamohan K. Menon, Advocate for the appellant
Present Shri G.R. Singh, AR for the respondent

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

FINAL ORDER No. 55649/2017

Per Ashok K. Arya :

1. The appellant, *M/s Jayaswal Neco Industries Ltd*, Raipur is in appeal against Order in Appeal No. 133/2013 dated 04/06/2013 whereunder inter alia the demand of Rs. 49,006/- has been confirmed along with interest.
2. Both sides have been heard.
3. The brief facts are that :-

i. The appellant is manufacturing Sponge Iron, Pig Iron, Billets etc classifiable under Chapter 72 of Central Excise Tariff.

ii. The appellant is availing Cenvat credit on inputs, capital goods and input services under Cenvat Credit Rules, 2004.

iii. During scrutiny of records of the appellants, it was observed that they were clearing Sponge Iron along with Coal/Coke fines to various customers. The appellant is clearing Sponge

Iron on payment of duty of Central Excise but they are not paying any duty on clearance of Coal/ Coke fines.

iv. The Revenue's case is that the appellant is taking Cenvat credit for input and inputs services used for production of Sponge Iron as well as for production of Coal/Coke fines. The appellant is not paying any duty on Coal/Coke fines; therefore they are not entitled to take Cenvat credit on the inputs/ input services used for production of coal/Coke fines. Further, the department says that since assessee appellant is not maintaining separate accounts for receipt, consumption of input and input services meant for use in the manufacture of dutiable final products and of exempted goods/products they are required to pay amount of 5%/10% of value of exempted final products/goods manufactured/cleared by the appellant.

v. The Revenue issued show cause notice (SCN). against the appellant dated 20th October 2011 and then decided the SCN by issue of Order in Original and then the Order-in-Appeal against which they are in appeal before the Tribunal.

4. After having carefully considered the facts of the case and the submissions of both the sides, it appears that the issue is covered by the Tribunal's decision in appellant's own case of *M/s Jayaswal Neco Industries Ltd v/s CCE, Raipur* 2016-TIOL-1853- CESTAT-Delhi. The Tribunal in the said case observes as under:

> 7. The dispute revolves around the question whether the coke fines are to be considered as an exempted final product or process waste. It is also not in dispute that the coke fines are exempted products arising in the course of manufacturing of finished products. A similar issue was examined by the Tribunal's Larger Bench in the case of *Rallies India Ltd. Vs. CCE Salem*-2007 (208) ELT 25 (Tri-LB) in which it was held:
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> "we are of the view that as long as two final products emerging out of use of common inputs are excisable and one of them is exempted, the provisions of Rule 57CC will apply."

8. However when this order was challenged before the Hon'ble High Court of Bombay the decisions was reversed. Finally, when the matter reached the Hon'ble High Court and has held in the case of *Hindustan Zinc Ltd*. (Supra) as follows:

"Furthermore, the provisions of Rule 57CC cannot be read in isolation. In order to understand the scheme of Modvat credit contained in this Rule, a combined reading of Rules 57A, 57B and 57D along with rule 57CC becomes inevitable. We have already reproduced Rule 57D above. It can be easily discerned from a combined reading of the aforesaid provisions that the terms used are 'inputs', final products' 'by-products', 'waste products' etc. We are of the opinion that these terms have been used taking into account commercial reality in trade. In that context, when we scan through Rule 57CC, reference to final product being manufactured with the same common inputs become understandable. This Rule did not talk about emergence of final product and a by-product and still said that Rule 57CC will apply. The appellant seeks to apply Rule 57CC when rule 57D does not talk about application of Rule 57CC to final product and by-product emerged as a technological necessity. Accepting the argument of the appellant would amount to equating by-product and final product thereby obliterating the difference through recognized by the legislation itself."

9. The view that emerges after going through the discussion above is that though coke fines arise during the course of manufacture of the final products and are exempted, this cannot be considered as an exempted final product but are having the colour of process waste. In the light of the discussions above, when inputs are contained in waste it will not attract the mischief of Rule 6(3)(b) of Cenvat Credit and there will be no requirement of paying 10%/5 % of the value of the exempted products.

5. Following above decision of the Tribunal, the impugned order is set aside and appeal allowed with consequential relief, if any, to the appellant.

[Order dictated and pronounced in the open court]

(Ashok K. Arya)
Member (Technical)

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