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

Excise Appeal No. 54504 of 2014

[Arising out of Order-in- Appeal No. 131/2014 dated 05.06.2014 passed by the Commissioner of Central Excise (Appeals), Delhi II]

M/s. MSP Steel & Power Ltd. **Appellant,**

Vs.

Commissioner of Central Excise **Respondent**
Raipur

Appearance:

Ms Surabhi Sinha, Advocate for the Appellants
Shri H C Saini, AR for the Respondent

<u>CORAM</u>:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 30.6.2017

FINAL <u>ORDER NO. 54778/2017</u>

<u>Per: Justice (Dr.) Satish Chandra</u>:

The present appeal is filed against the order in Appeal No. 131/2014 dated 05.06.2014. The period of dispute is November, 2011 to November, 2012.

2. The brief facts of the case are that the appellant is a public limited company and during the period under consideration was engaged in the manufacturing of sponge iron, MS ingots and TMT bars falling under Chapter 72 of the Central Excise Tariff Act, 1985 at their factory. In the process of manufacturing of their final product, i.e.

sponge iron waste is generated known as 'Dolochar'. The department has brought 'dolochar' to the clutches of excise duty. Being aggrieved the appellant filed the present appeal.

2. With this background, we have heard Ms. Surabhi Sinha, learned advocate appearing for the appellant and Shri H C Saini, learned DR appearing for the Revenue and perused the record.

3. After hearing the submissions of both parties and perusing the record, it appears that identical issue has come up before the Tribunal in various decisions. Reference can be made to the case of M/s. Jai Balaji Industries vs. CCE & ST, Raipur wherein vide Final Order No. 55895 – 55898/2016 dated 19.12.2016, Tribunal has observed as under:

> *5.1 In the light of above observations and by following the Hon'ble Supreme Court's decision in the case of* ***Union of India vs. Ahmedabad Electricity Co. Ltd. [2003 (158) ELT (SC)]*** *and CESTAT decision in the case of* ***Vishal Pipes vs Commissioner of Central Excise, Noida [2010 (255) ELT 532 (Tri-Delhi),*** *we are of the considered view that the items Char/dolochar are not manufactured or excisable goods. Therefore, the impugned order is not sustainable and is hereby set aside."*

4. Following the decision (supra), we set aside the impugned order. In the result appeal filed by the appellant is allowed.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

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