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

Date of Hearing/Decision: 17.8.2017

Appeal No. E/834/2011-SM

(Arising out of Order-in-Appeal No. IND/468/2010 dated 24.12.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Indore)

JB Mangharam Foods Pvt. Ltd. Appellant

Vs.

CCE, Indore Respondent

Appearance

Shri R. Krishnan, Advocate - for the appellant

Shri Ubhav Sengraj, D.R. - for the respondent

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

Final Order No. 56410/2017

Per Ashok K. Arya :

M/s J.B. Mangharam Foods Pvt. Ltd. is in appeal against the Order-in-Appeal No. 468/2010 dated 24.12.2010 whereunder demand of duty of Central Excise along with interest and penalty has been sustained.

2. The brief facts are that:

(i) The appellant is engaged in the manufacture of biscuits falling under Chapter 19 of Central Excise Tariff.

(ii) During the course of audit, the department noticed that they had miscellaneous income from the scrap of old machinery.

(iii) The department issued Show Cause Notice that the appellant sold scrap of old machinery which was no more in use and did not reverse, the Cenvat credit availed on the said old machinery. However, the appellant claims that the said machinery was of non-cenvatable category.

(iv) The department issued Show Cause Notice proposing duty on such scrap of machinery sold.

(v) The Show Cause Notice additionally proposed recovery of duty of excise on clearance of waste and scrap of inputs including packing material and capital goods.

3. Both sides have been heard.

4. After having carefully considered the facts of the case and the submissions of both the sides, it appears that the matter is covered by the Tribunal's decision in the appellant's own case vide Final Order No. 55890/2016 dated 9.11.2016 (Appeal No. 3357/2010-SM), whereunder the Tribunal observes as under :

"6. I find that as regards the packing materials removed as waste and scrap by the appellant, the Hon'ble Supreme Court in the case of West Coast Industrial Gases Ltd. (supra) have held that such waste cannot be treated as arisen out of any manufacturing process and no duty is required to be paid / cenvat credit to be reversed. Thus, I am of the view that duty demand on the packing material is liable to be set aside.

7. With regard to oily cotton canvas, which were removed in the form of scrap, cannot be considered as input for the appellant, who manufactures biscuits. Thus, I am of the firm opinion that said goods are not the input for the appellant. Thus, removal of such goods as scrap will not attract payment of central excise duty/ reversal of cenvat credit. Similar is the case with regard to the wooden scrap namely, doors, windows, iron rods etc., which have no relation with the manufacture of the final product and obviously there was no scope on the part of the appellant to avail the cenvat credit. Thus, duty liability cannot be fastened on removal of those goods as waste and scrap.

8. With regard to plastic scrap, the Ld. Advocate states that the same were generated during the course of manufacture/ packing of the final product. Since, initial procurement of plastic were not input as such and were not generated during the course of manufacture of the final product, on removal of the same as waste and scrap, no duty is required to be paid in view of the decision of this Tribunal in the case of Dhillon Kool Drinks & Beverages Ltd. (supra). The said decision was upheld by the Hon'ble Supreme Court, reported in 2002 (144) ELT A-210 (SC).

9. However, I find that the appellant has not produced adequate documents to demonstrate that no cenvat credit on iron and steel items removed as scrap were taken by the appellant. Since, the Ld. Advocate submits that the appellant had maintained adequate records, I am of the view that the matter should go back

> to the original authority for verification of records/ documents maintained by the appellant. If the appellant able to convince the original authority that no cenvat credit has been taken on the aluminum/ steel items removed as scrap, no demand shall be confirmed against the appellant on removal of those goods.
>
> 10. The lower authorities have invoked Section 11AC of the Central Excise Act, 1944 for imposition of penalty. Since, the information were gathered by the department from the balance sheet of the appellant, no malafide can be attributed, justifying imposition of penalty under Section 11AC ibid. Therefore, the penalty imposed in the impugned order is set aside."

4.1 In view of the above cited observations of the Tribunal in the appellant's own case (supra), no duty liability can be sustained in case of waste material, wooden scrap/ plastic scrap oily cotton canvas scrap, the details of which are given in the table annexed with the appellant's reply to the Show Cause Notice.

4.2 However, in case of the duty liability on SS Steel, MS, aluminium scrap, the matter is remanded to the original adjudicating authority to verify the fact that no Cenvat credit on the machinery or iron and steel removed as scrap were taken by the appellant and thereafter decide the matter afresh after giving opportunity of personal hearing to the appellant.

5. Consequently, the impugned order is set aside and the matter in respect of liability of duty on the scrap of machinery/Steel and MS aluminium scrap is remanded for de novo adjudication to the original adjudicating authority.

6. In the result, the appeal is allowed in above terms.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

RM