CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 28.09. 2017

Excise Appeal No. 52644 of 2015

(Arising out of order-in-appeal No. 174(SLM)CE/JPR/2015 dated 21.04.2015 passed by the Commissioner (Appeals), Central Excise, Jaipur-II).

M/s Hindustan Copper Limited Appellant

Vs.

CCE, Jaipur-II Respondent

Appearance:

Ms. Asmita Nayak & Sh. R. K. Ranjan, Advocates for the assessee
Sh. H. C. Saini, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 56873/2017

Per: **B. Ravichandran**:

The present appeal is filed against the order-in-appeal No. 174(SLM)CE/JPR/2015 dated 21.04.2015 passed by the Commissioner (Appeals), Central Excise, Jaipur-II.

2. Vide the impugned order, the Commissioner (Appeals) upheld the rejection of claim for refund filed by the appellant. The refund claim arose pertaining to the period 2004-2005 with reference to the duty paid by the appellant through cenvat debit in October, 2007. Later it was held that no duty liability will arise on anode scrap during the material time. Consequently, the

claim for refund arose. The lower authorities though on merit agreed that refund is eligible, rejected the same on the ground that supporting document to establish that the job worker did not pass on any duty element to the customer and also evidence that the appellant did not realise the debited duty amount from the job worker, were not submitted.

3. Ld. Counsel for the appellant submitted that the dispute is for the period 2004-2005 and the show cause notice was issued on 16.04.2007. When the matter was decided regarding non excisability of anode scrap they filed the refund claim. There is no question of establishing the question of unjust enrichment with the support of documents of job worker as the appellant never passed on any duty element to the job worker either during the material time or after debit made in October, 2007. They have also submitted certificate to this effect. Their accounts will show that no such debit was made for job worker towards duty element which was paid much later.

4. We have heard both sides and perused appeal records.

5. The only reason for rejection of claim of the appellant is that the above mentioned documents were not submitted by them. We find that the lower authorities misdirected themselves in examining the question of unjust enrichment. Admittedly, during the disputed period no duty was paid by the appellant. The same was paid in by a single debit in cenvat credit account in October, 2007, only. Hence, the question of producing evidence from the job worker during the material time in order to establish that the job worker did not pass on any duty element does not arise. It is categorically asserted by the

appellant that there ledger account will show that they have no debit account to pass on the duty to the job worker. We find that in these material facts, the appellant established that duty element debited has been borne by them only. Accordingly, we find no merit in the impugned order in rejecting the refund claim on this ground. By setting aside the impugned order, we direct the original authority to examine the claim with supporting documents for sanction. The appeal is disposed of in the above terms.

(Dictated & pronounced in the open Court).

(Justice (Dr.) Satish Chandra) President	(B. Ravichandran) Member (Technical)

Pant