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

COURT-I

Date of hearing: 16.11.2017
Date of Decision: 23.11.2017

Appeal No. E/53029-53033/2016-EX [DB]
[Arising out of the Order-in-Appeal No. ALW-EXCUS-O-I-O-COM-28/16-17 dated 22.08.2016, passed by The Commissioner of Central Excise & Service Tax, Alwari.]

Century Metal Recycling (P) Ltd.,
P.M. Gautam
Laxman Kumar &
B.B. Biswal … Appellant

Vs.

CCE Alwar … Respondent

Appearance:
Present Shri K. K. Anand, Advocate for the appellant
Present Shri H. Saini, DR for the respondent

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

FINAL ORDER No. 58032-58036/2017

Per: V. Padmanabhan

1. The appeal is against the Order-in-Appeal No. 28/2016-17 dated 19/08/2016. The appellant is engaged in the manufacture of Aluminum Alloy Molten Metal, Aluminum Alloy Ingots, Zinc Alloy and other goods falling under various Chapters of the Schedule to the Central Excise Tariff Act, 1985. The appellant has got five units but the dispute is pertaining to the unit situated at Bhiwadi, Rajasthan.

2. Brief facts of the case are that:-

i. The appellant has five manufacturing units, all registered with Central Excise, engaged in the manufacture of Aluminum alloy in Molten/Ingots form from aluminium scrap, both imported and indigenous. These five units are located at Tatarpur, Dist Palwal (Haryana), Haridwar (Uttarakhand), Gurgaon (Haryana), Tapukara, Bhiwadi (Rajasthan) and Manesar (Haryana). Bulk of the imported scrap is imported through ICD, Dadri (U.P.) To attend to the import formalities and transportation of the imported scrap, the company also has an office at Dadri which is neither a manufacturer nor separately registered under central excise as dealer or importer. The said Dadri office of the company dispatches the containers directly from port to company's manufacturing units.

ii. The Company has an IEC Code No. 0504077562 which has been issued in the name of the registered office of the Company at New Delhi. However, the names of all the manufacturing units of the company are duly mentioned in it. As a practice the name of the importer always mentioned in the Bills of Entry is the Tararpur, Dist Palwal Unit. All the imports of the Company through ICD, Dadri, are made under the said IEC Code. All the manufacturing units are also separately registered with Central Excise.

iii. Depending upon the requirement of imported scrap in the different units of the Company, the containers containing the scrap are dispatched directly from ICD Dadri to the respective units under cover of a challan issued by the Dadri office of the company, accompanied by a photocopy of the Bill of Entry.

iv. Part of the present dispute is related to availment of Cenvat credit in respect of the imported scrap by the Unit of M/s Century Metal Recycling Private Ltd., at Bhiwadi, Dist. Alwar (Rajasthan) ['the appellant'].

v. In the instant case, wherever there were imports of scrap in more than one container under one Bill of Entry, part consignment (comprising full containers) was sent directly from ICD Dadri to the Palwal Unit under cover of original Bill of Entry and the remaining part of the consignment (in full containers) was sent to the other units of the company accompanied by photocopies of the said Bill of Entry. The appellants used to take Cenvat Credit of the CVD and SAD on the strength of such challans accompanied by photocopies of the bill of entries. The department was of the view that such challans are not valid documents for availing Cenvat Credit in terms of Cenvat Credit Rules, 2004 and vide the impugned order, such Cenvat Credit amounting to Rs. 3,71,54,802/- covering the period 13/11/14 to 30/09/15 was disallowed.

3. The second part of the present dispute is that for manufacture of Aluminum Ingot the appellant imported scrap. The imported

scrap is first examined and segregated and scrap of metal other than aluminum are weeded out and disposed of on payment of duty on transaction value. Department was of the view that part of the imported scrap cleared as above has to be considered as clearance of impugned, 'as such and hence as per Rule 3 (5) of the CCR 2004, the appellant should reverse the credit availed on this portion of the scrap instead of paying duty on the transaction value on such segregated material. Accordingly, differential duty of Rs. 4,84,52,101/- for the period 1/4/12 to 31/7/2015 was demanded from the appellant.

Aggrieved by the impugned order, which also demanded interest as well as penalty equal to the duty demanded above, the present appeals have been filed.

4. With the above background we heard Shri K.K. Anand for the appellant as well as Shri H. Saini, Ld. DR representing the Revenue.

5. The Ld. Advocate submitted that after clearance of the imported goods from ICD Dadri, the scrap is dispatched to the various units of the appellant in full container loads. A challan along with copy of bill of entry is sent along with consignment giving the details of quantity, value and amount of duty paid for the portion of the goods dispatched to the particular unit. Ld. Counsel submitted that this satisfies the Rule 11 (2) of the Cenvat Credit Rules, 2004. He further submitted that there has been no allegation made by Revenue of any misuse of Cenvat Credit. He also submitted a

bulky compilation giving copies of the bills of entry as well as challan and packing list under which the imported goods were dispatched. He further submitted that the full details were already placed before the Adjudicating Authority but he chose not to give any finding on such elaborate submission and has disallowed Cenvat Credit.

6. The Ld. DR justified the impugned order pertaining to disallowance of Cenvat Credit. He argued that the challan issued based on which Cenvat Credit has been availed is not a proper document specified under Rule 9 (1) (a) (ii) accordingly, he argued that the Cenvat Credit merits to be disallowed.

7. After hearing both sides we find that the scrap has been imported by the appellant in a consolidated manner for all the five units of the appellant. Further such imported scrap consignment was split and different quantity was sent to different units. The appellant has claimed that each part of the full consignment is to be considered as duty paid and Cenvat Credit is to be allowed. The same has been disallowed by Adjudicating Authority for the reason that the only document under which part consignments have been received in Bhiwadi unit is the challan which is not specified document. But the fact remains that there is no dispute regarding the receipt of goods at the appellant’s factory. To prove the point, the appellant has submitted detailed documentation through which they have attempted to establish that the part consignments belong to the original bills of entry. At this stage the Ld. DR has

expressed inability to verify such bulky documents. He submitted that for verification, the matter may be remanded.

8. The challans accompanying the part consignment are not documents which are sanctioned by Cenvat Credit Rules, 2004 for availing Cenvat Credit. We note that the difficulties faced by the appellant are genuine in the sense that the entire imported consignment may not be required to be used at the same time in one unit. But before allowing such Cenvat Credit, it is required to verify and confirm that part of the consignment which has been diverted to the appellant unit has in fact been received there and credit is to be allowed only to the extent the goods have been received. For this purpose we set aside the impugned order and remand the matter to the Adjudicating Authority for examination of the documents and to pass de novo order.

9. Next we turn to the second issue before us. The imported Aluminum scrap has been segregated after receipt of the same in the factory and portion of this scrap other than that of Aluminum have been cleared and duty paid on the basis of transaction value. The view of the Revenue is that this amounts to clearance of inputs as such and will incur the mischief of rule 3 (5) of the Cenvat Credit Rules, 2004 and requires reversal of credit availed on this portion of the scrap.

10. We note that a similar issue pertaining to segregation of copper scrap has arisen in the past and Circular No. 1029/17/2016 CX dated 10/05/2016 was issued by CBEC. The circular has clarified

the treatment to be given to the clearance of segregated foreign material. The relevant portion of clarification reads as follows.

> *Subject: Clarification on segregation of impurities viz. iron, steel, rubber, plastic, dust etc. from honey grade brass scrap-Regarding.*

> *"Representations have been received from the members of the trade involved in manufacture of brass products, regarding applicability of provisions relating to clearance of segregated foreign materials as "inputs as such" from imported honey grade brass scrap. The said imported scrap mainly contains brass metal but it also contains impurities like iron, steel, rubber, plastic, dust etc. which is integrally attached to the main material/ brass scrap. Before feeding resultant brass scrap in the furnace during the manufacturing process, the said foreign materials (impurities) attached to the honey grade brass scrap is segregated manually and then such sorted material is issued for further process like breaking, cutting etc. wherein big pieces of scrap are converted into small pieces so that the same can be fed into the furnace. Ultimately the brass scrap is fed into furnace where brass melts but materials like steel, iron etc. do not as they have higher melting point. Molten brass is poured for manufacturing whereas foundry waste of iron, steel, slag is cleared and sold separately. Such foundry waste is quite clearly process waste.Â*

> *2. However, there is another category of waste viz. foreign materials segregated initially and not fed in furnace. The issue is when such segregated foreign material is cleared by the brass manufacturers, can it be treated as clearance of "inputs as such" and accordingly are the 1 manufacturers required to pay an amount equal to the credit availed in respect of such inputs in terms of Rule 3(5) of CENVAT Credit Rules, 2004.Â*
> *3. The issue has been examined. Segregation from honey grade brass scrap in order to weed out other foreign materials before the process of melting in the furnace is an essential process relating to manufacture of brass articles. The foreign materials, emerging during the process of segregation have to be treated as process waste and cannot be treated like removal of inputs as such. The segregated foreign material has an altogether different character and use vis-a-vis brass scrap. Value per unit and classification of the segregated foreign material is also different from that*

of imported brass scrap. Accordingly, clearance of foreign material such as iron, steel, rubber, plastic, dust etc. cannot be treated as clearance of inputs as such. It may be noted that circular no. 62/2001-Cus dated 12.11.2001 does not apply to the issue at hand as the facts at hand are different.
4. In view of above, it is clarified that the clearance of segregated foreign materials namely iron, steel, rubber, plastic, dust etc. from honey grade brass scrap before feeding in the furnace cannot be treated as removal of "inputs as such" as envisaged under Rule 3 (5) of CENVAT Credit Rules, 2004. The segregated foreign material in such situation, as has been explained above, shall be cleared on payment of Central Excise duty on transaction value as per its appropriate classification and rate of duty determined on merits."

11. It is not clear from the impugned order whether the Adjudicating Authority had the benefit of the clarification issued by the board at the time of passing the order. Since, we are anyway remanding the matter, we direct the Adjudicating Authority to re-decide the issue in the light of CBEC clarification as above.

12. In view of above we set aside the impugned order and remand the matter to the Adjudicating Authority for passing de novo order. Additional evidence may be admitted as per law.

[Order Pronounced in the open court on__23/11/2017_]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Rekha