IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV

Excise Appeal No.E/52992/2018-EX [SM]

[Arising out of Order-in-Appeal OIA-BHO-EXCUS-002-APP-131-18-19 dated 08/05/2018 passed by the COMMISSIONER OF CGST & CENTRAL EXCISE-RAIPUR (Appeal)]

Excise Appeal No.E/52993/2018-EX [SM]

[Arising out of Order-in-Appeal OIA-BHO-EXCUS-002-APP-132-18-19 dated 08/05/2018 passed by the COMMISSIONER OF CGST & CENTRAL EXCISE-RAIPUR (Appeal)]

BHAGWATI POWER & STEEL LTD. ...Appellant

Vs.

C.C.E. & S.T.-RAIPUR ... Respondent

Present for the Appellant : Mr.Manish Saharan, Advocates
Present for the Respondent: Ms.Tamanna Alam, D.R.

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing: 28/11/2018
Pronounced on :19/12/2018

Final ORDER NO. 53436-53437 /2018

PER: RACHNA GUPTA

Present order disposes of two appeals involving the identical issue. The details are as under:-

Sl.No.	Appeal No.	Date of SCN	Dt. Of OIO	Date of OIA	Proposed Amt. of Recovery
1.	52992/2018	23.06.2017	29.11.2017	08.05.2018	Rs.13,01,502/-
2.	52993/2018	19.05.2017	31.10.2017	08.05.2018	Rs.11,10,985/-

2. The facts relevant for the adjudication are that the appellants M/s. Bhagwati Steel & Power Ltd. are engaged in manufacture of sponge iron. They are also engaged in generation of electricity and were availing the credit of cenvat credit paid on input service, inputs and capital goods in terms of Cenvat Credit Rules, 2004 (hereinafter called CCR). While verifying the ER-1 Returns of the appellants for the period w.e.f. July, 2016 to May, 2017, the Department observed that the appellants have discharged their duty liability on their final product i.e. sponge iron and billet, but their returns had no mention of any amount of duty paid on iron ore fines manufactured and removed during the said period.

3. The Department also observed that in manufacture of sponge iron, iron ore lumps of different sizes are firstly subjected to crushing, thereafter iron ore fines are taken out/screened out from the raw-material handling plant. The said taken out /screened out iron ore fines, which are in powder form cannot be used for manufacture of sponge iron. Iron ore lumps and iron ore fines are separately classifiable under Central Excise Tariff depending upon the percentage of iron content therein. The Department still forming an opinion that the appellants were liable to discharge their liability on clearance of iron ore fines as well, issued a show cause notice No.1042 dated 23.06.2017 proposing the recovery of an amount of Rs.13,01,502/- as being equal to 6% of the total

price of the exempted finished goods under Rule 6 (3) (i) of CCR, 2004. In view of Rule 14 of CCR read with Section 11 A (1) of Central Excise Act, 1944, the interest at the appropriate rate in accordance of the aforesaid rule read with Section 11 AA of the Act the penalty in accordance of Rule 15 of CCR read with Section 11AC (1) (a) of the Act was also proposed. The said proposed demand was dropped by the initial adjudicating authority / Assistant Commissioner vide his order No.60 dated 29.11.2017. The Department being aggrieved of the said decision filed an appeal before Commissioner (Appeals), who vide the order under challenge i.e. the one bearing No.47 dated 08.05.2018 has set aside the said order of Asstt. Commissioner, thereby confirming the proposed demand holding that iron ore fines in question are needed to be considered as exempted goods being sold for consideration during the relevant period as provided under the amended provisions of Rule 6 (1) of CCR, 2004. Being aggrieved, the assessee/,appellant has filed the impugned appeal before these Tribunal.

4. I have heard Mr. Manish Saharan Ld. Advocate for the appellant and Ms. Tamanna Alam, ld. D.R. for the Department.

5. It is submitted on behalf of the appellant that the iron ore fines since were not obtained by undertaking any such process, which may amount to manufacture under Rule 2 (f) of the Central Excise Rules, the fines cannot be called as

excisable goods. There is no Notification which has granted any exemption to this Product. Hence, the allegations of the Department are not sustainable. Otherwise also the appellants are registered with the Excise Department for manufacturing of excisable goods i.e. sponge iron and not for the iron ore fines. However, iron ore and coal are their raw-materials. Hence in accordance of provisions of Rule 3 of CCR, on receipt of the iron ore in the factory, the appellants are eligible for the cenvat credit, irrespective of the fact that the inputs were returned or removed as such by the respondent. While impressing upon the findings of Asstt. Commissioner / original adjudicating authorities, the findings of Commissioner (Appeals) are alleged as wrong. Accordingly, are prayed to be set aside. Appeal is prayed to be allowed.

6. While rebutting these arguments, ld. A.R. has submitted that the iron ore fines are classifiable under Central Excise Tariff due to being having certain percentage of iron content therein. Since the production thereof is the manufacturing activity of the appellants and these are the exempted goods, the appellant was required either to maintain a separate account for dutiable and exempted products or could avail cenvat on that quantity of inputs/input service, which are used in manufacture of the dutiable goods in accordance of Rue 6 (2) of CCR. Also in furtherance of Rule 6 (3) of CCR, 3 further options were given to the manufacturer for one of those to be followed. Resultantly, the appellant was liable to

pay an amount equal to 6% of the value of exempted goods, as was rightly proposed vide the impugned show cause notice and the Commissioner (Appeals) has committed no error while confirming the said order. Appeal is accordingly, prayed to be dismissed.

7. After hearing both the parties and perusing the entire record of the preset appeal, I observe that the moot question to be adjudicated in these appeals is :

Whether the iron ore fines as cleared by the appellants can be considered as a separate excisable but exempted commodity.

8. For the purpose, it is foremost important to understand the admitted procedure for the activity of the appellant, not only from the show cause notice, but from the appellant's submission. The admitted procedure adopted by the appellant in manufacturing his final product i.e. sponge iron is that the appellant procures iron ore as the input for manufacturing sponge iron. The said iron ore lumps of different sizes are first crushed and are then segregated by screening. It is thereafter that requisite sized iron ore /ore lump is feeded in the sponge iron klin. In the aforesaid process of segregation that the iron ore fines are inevitably generated. Thus these fines, to my opinion cannot be considered as the result of the manufacturing activity of the appellant, since no manufacturing activity is involved for emergence of the same out of iron ore

by the appellant. **Hon'ble Apex Court in the case of Union of India vs. Parle Products Ltd. - 1994 (74) ETt 492** and also in a prior case titled as **Ujagar Prints vs. Union of India - 1988 (38) ELT 535 (SC)** has held that a process which simply changes the form or size of the same article or substance would not ordinarily amount to manufacture and no excise duty would be payable unless in a particular case by Section Note of the Tariff or by wording of the relevant heading or sub-heading, the said process has been specified as amounting to manufacture. It is not the case of the respondent that sieving out of the finer input from coarser one will be a manufacturing activity. In the present case, the finer iron ore/ the input as inevitably generated in the process of segregation is admittedly not usable in the klin for the purpose of manufacture of the final product i.e. the sponge iron. However, it is still the part of the input. The iron ore fines are therefore, held not to be the excisable commodity. The findings of original adjudicating authority are found to be correct. The findings of impugned order under challenge being contradictory to this effect are held liable to be set aside.

9. Further, the Department has brought nothing on record to show that the iron ore fines can be considered as exempted goods. Apparently and admittedly, there is no Notification of the Revenue granting exemption to this product. Thus, I am of the opinion that embargo created in Rule 6 (3) (b) of CCR will not apply for removal of iron ore fines from the appellant's

factory. Confirmation of demand by Commissioner (Appeals) is therefore, held to be not proper and justified. The decision of this Tribunal in the case of **Commissioner, Excise and Service Tax, Raipur vs. Arathi Sponge and Power Ltd.. – 2016 (333) ELT 415** supports my finding. The facts of that case are identical as the one as of the present appeals. The Tribunal while relying upon previous decision in the case of **Real Ispat & Power Ltd. reported as 2013 (287) ELT 494** and also of **Rallys India Ltd. vs. Union of India reported in – 2009 (233) ELT (309) (High Court Mumbai)** has held that the respondent is engaged in manufacture of sponge iron for which purpose they undertake the process of crushing and screening of iron ores. The iron ore fines emerging during the said process being cleared by the respondent cannot be held to be the manufacturing activity and as such, the iron ore fines as cleared without payment of duty would not call upon the assessee to pay the duty in terms of Rule 6 of CCR.

10. As a result of entire above discussion, the order under challenge is hereby set aside. Both the appeals resultantly stands allowed.

[Pronounced in the Open Court on 19/12/2018]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita