CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 52379 of 2016 [DB]

[Arising out of Order-in-Original No.ALW-EXCUS-O-I-O-COM-12/16-17 dated 19th May, 2016 passed by the Commissioner of Central Excise & Service Tax, Alwar, Rajasthan]

M/s.Rajasthan Prime Steel Processing Center Pvt. Ltd. **...Appellant**
SPL-I (A), Tapukara Industrial Area,
Khushkhera, Dist. Alwar, Rajasthan-301707

Vs.

Commissioner of Central Excise & Service Tax, **...Respondent**
A-Block, Surya Nagar, Alwar,
Rajasthan- 301001

<u>APPEARANCE:</u>

Shri Puneet Bansal & Saurabh, Advocates for the Appellant
Shri V.B. Jain, Authorised Representative for the Respondent

Coram: HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER No. 50710/2019

DATE OF HEARING : 24 April, 2019
DATE OF DECISION: 24 April, 2019

<u>ASHOK JINDAL:</u>

The appellant is in appeal against the impugned order demanding duty on scrap generated at the end of job worker.

2. The facts of the case are that the appellant is engaged in the manufacture of automobile parts and clearing the same on payment

of duty. The Appellant entered into an agreement with Honda Cars India Limited, Noida (Honda N) for supply of automobile parts. The appellant procured steel coils from various ventures and undertook activities of cutting slitting and welding at its premises. For manufacture of certain parts, pressing was also required. As appellant was not having pressing facility in their premises, therefore, the appellant sent the semi-finished goods to M/s. Honda Cars India Limited, Tapukara (Honda T) for job work. As appellant was operating under Rule 4 (6) of Cenvat Credit Rules, 2004 since 2009-10 and also obtained requisite permission from the Assistant/ Dy. Commissioner of Central Excise, the appellant cleared semi-finished goods to Honda-T under job work challan without payment of duty, Honda-T undertook pressing activity on job work basis and raised debit notes on appellant to recover job work charges. Therefore, Honda-T cleared the scrap generated during the course of job work on payment of duty under the cover of excise invoice and the appellant cleared finished products to Honda-N from Honda-T on payment of excise duty under the cover of excise invoice. The Revenue entertained a view that scrap generated at the end of job worker is dutiable in the hands of the appellant and appellant has not pay duty thereof. Therefore, the proceedings were initiated against the appellant by issuance of show cause notice. The matter was adjudicated and demand against the appellant was confirmed. Alongwith interest and penalty was also imposed. Against the said order, the appellant is before us.

3. The ld. Counsel for the appellant submits that the scrap generated at the end of job worker, job worker has paid the duty on the same. These facts are not in dispute and on the same scrap duty has been demanded from the appellant, which means, on the same product, the Department is asking duty twice, which is not permissible in law. Moreover, the appellant has obtained permission from the Department under Rule 4 (6) of Cenvat Credit Rules, 2004. In that circumstance, appellant is not liable to pay duty. He further submits that in the case of **Mahindra Hinoday Industries Limited v. CCE reported in 2013 (292) ELT 456 (Tri.-Mumbai)** it has been held that waste and scrap generated at job workers premises, the Principal manufacturer is entitled to avail cenvat credit of duty paid by job worker. Therefore, it is Revenue neutral situation is whatever the cenvat credit was taken have to take by the appellant, the same is duty demanded by him.

4. Further, he relied on the decision of **National Engineering Industries Limited v. CCE reported in 2017 (346) ELT 390 (Tri.-Del.)** to say that waste and scrap generate by job worker while processing goods sent by principal manufacture under Notification No.214/86, the Principal manufacturer is not liable to pay duty on such waste and scrap. Therefore, he prayed that impugned order is to be set aside. He further submitted that the show cause notice was issued on 17 April 2015 by invoking extended period of limitation for the period April 2010 to March, 2014, the said Show cause notice was barred by limitation.

5. On the other hand, ld. A.R. reiterated the findings of the impugned order.

6. Heard the parties and considered the submissions.

7. The short issue emerges is that whether the appellant is liable to pay duty on the scrap, which have been generated at the end of job worker,(who cleared the same on payment of duty) or not?

7. Admittedly, in this case, the job worker has paid duty on the scrap, which is generated during the course of job work. As duty has already been paid on the said scrap, therefore, no duty is payable by the appellant, otherwise, it will be the duty has been demanded twice. Moreover, similar issue has been dealt by this Tribunal in the case of **National Engineering Industries Ltd. (supra**), wherein this Tribunal held that waste and scrap generated by job worker while processing the goods sent by the principal manufacturer, the Principal manufacturer is not liable to pay duty on such waste and scrap.

8. The Hon'ble High Court of Bombay in the case of **Rocket Engineering Corporation Ltd. reported in 2008 (223) ELT 347 (Bom.)** has also entertained the issue whether scrap generated at job workers end out of the processing of inputs is required to return to supplier and if it is not returned back, whether the supplier of input is required to pay appropriate duty thereon or not. The Hon'ble High Court has held that the principal manufacturer is not

required to pay duty thereon. Therefore, we hold that as the scrap generated at the end of job worker has already suffered duty in job worker's end therefore, the appellant is not required to pay duty thereon.

9. In view of the above, we set aside the impugned order and allow the appeal with consequential relief, if any.

[Operative part pronounced in the open Court]

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

Anita