CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. E/1489/2010

(Arising out of Order-in-Appeal No. 06/2010 (H-III) CE dt. 29.04.2010 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-III), Hyderabad)

M/s Raasi Refractories Ltd., …..Appellant(s)

Vs.

Commissioner of Customs, Central Excise & Service Tax, Hyderabad - III …..Respondent(s)

Appearance
Shri Narsimha Murthy, Advocate for the Appellant.
Shri Dass Thavanam, Superintendent (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 20/08/2018
Date of Decision: 20/08/2018

FINAL ORDER No. A/31121/2018

[Order per: M.V. Ravindran]

This appeal is directed against Order-in-Appeal No. 06/2010 (H-III) CE dt. 29.04.2010.

2. The relevant facts that arise for consideration, after filtering out of unnecessary details are, during the course of verification of records and books of accounts, it was noticed that

during the period 2003-2004 to 2007-2008 appellant has recorded some amounts as received from sale of steel scrap/miscellaneous scrap and Grog. The audit party sought an explanation from appellants. Appellants indicated in the reply to audit party that the steel scrap is generated out of MS Plates, Moulds/ Liners on repairs and replacement in plant etc., and the scrap generated is also from their work shop, they never availed any CENVAT credit on these materials and hence no Central Excise duty is paid and further that in the case of used and rejected "GROG" they had procured from local market, they did not avail the CENVAT credit hence no Central Excise duty was paid. A show cause notice was issued to appellant as to Central Excise duty be not demanded from them on such amounts realised towards the sale of steel scrap, miscellaneous scrap and Grog. Appellant contested the show cause notice on merits taking the same stand as was taken before the audit party. The Adjudicating Authority after following due process of law, confirmed demands raised along with interest and also imposed the penalty. On an appeal, the First Appellate Authority also held that the Order-in-Original is correct and no interference is called for.

3. Learned Counsel while assailing the order of First Appellate Authority, submits that as regards the demands raised in respect of clearances of Grog, the amount involved is Rs. 4,47,320/- that the said Grog is combination of the waste of refractory materials purchased by them from the market as well as importer and self generated. He submits that the Grog is imported, the duty liability

discharged while on the Grog purchased from the market Central Excise duty liability not discharged by the supplier. He would submit that they have cleared the consignments of non-duty paid Grog only.

3.1 As regards the duty liability of Rs. 17,54,492/- on the clearances of waste and M.S. Scrap arising out of M.S. Plates, Moulds/Liners etc., he submits that this scrap was generated during the process of maintenance and repairs of their capital goods and not during the process of manufacture of refractory items, which is their final product. He would submits that the issue is now settled by the Apex Court in the case of *Grasim Industries Vs. Union of India* [2011 (273) ELT 10] wherein, it is held that scrap which is generated during the process of repair and maintenance cannot be said to be by-products and the duty liability does not arise.

4. Learned Departmental Representative on the other hand draws our attention to the findings recorded by the First Appellate Authority. It is his submission that the waste and scrap that has arisen cannot be considered that arose manufacturing of components, parts, spares and structures etc., and the description mentioned in the sales invoice indicates that the said scrap is arising out of M.S. Boring scrap, M.S. scrap etc. It is his further submission that the duty liability on the scrap arises the moment it is cleared from the factory premises. As regards the duty liability on Grog, it is his submission that there are clear cut finding no separate accounts maintained by the assessee to come to a conclusion the Grog cleared by them is non-duty paid.

5. On careful consideration of submissions made by both sides, we find as regards the duty liability of Rs. 17,54,492/- on the clearances of scrap arising out of MS Plates, Moulds, Liners, etc., appellant has been taking a consistent stand before the Revenue Authorities that this scrap arose during maintenance and repair worn-out parts of machinery and during maintenance in workshop. This fact is not in dispute by the Revenue as assessee issued letters dated 10.12.2005 informing the audit party is on record, and not disputed or controverted in any manner. If that be so, we find that the reliance placed by the First Appellate Authority on the judgment of *Union of India Vs. Grasim Industries* (High Court of Rajasthan) would not be of any help as the judgment was carried SLP in Apex Court. Apex Court in the judgment dated 13.10.2011 (as cited herein above) specifically in paragraph No. 14 held that such scrap is not dutiable. With great respect, we reproduce the paragraph 14:

> ***"14.*** *In the present case, it is clear that the process of repair and maintenance of the machinery of the cement manufacturing plant, in which M.S. scrap and Iron scrap arise, has no contribution or effect on the process of manufacturing of the cement, which is the excisable end product, as since welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams etc. which are used in the process of repair and maintenance are not raw material used in the process of manufacturing of the cement, which is the end product. The issue of getting a new identity as M.S. Scrap and Iron Scrap as an end product due to manufacturing process does not arise for our consideration. The repairing activity in any possible manner cannot be called as a part of manufacturing activity in relation to production of end product. Therefore, the M.S. scrap and Iron scrap cannot be said to be a by-product of the final product. At the best, it is the by-product of the repairing process which uses welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams etc."*

In view of the foregoing, demand of duty liability on the MS scrap that arises during the repair and maintenance, we find that the issue is squarely settled in favour of the appellant herein. Accordingly, the demand of Rs. 17,54,492/- with interest thereof and penalties imposed are unsustainable and liable to be set aside and we do so.

6. As regards the demands raised on appellant of Rs. 4,47,320/- on the clearances of Grog, we find confirmation of such demand is correct as appellant is not able to produce any evidence to claim that such Grog cleared by them were non-duty paid and received from open market. Appellant should have produced records to show that they had maintained separate accounts of the Grog received by the market and non-duty paid nature of the said Grog. In the absence of any such records, we hold that the appellant is not able to justify his claim that they are not required to pay duty on "Grog". Accordingly, we hold that the lower authorities were correct in confirming the demand of Rs. 4,47,320/- along with interest and impose penalties. We do not find any reason to interfere such a reasoned order of the lower authorities on the point of duty liability on Grog.

7. The appeal stands disposed of as indicated herein above.

(Operative part of this order was pronounced in open court on conclusion of hearing)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….