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

Appeals Nos. E/793 & 794/2011

(Arising out of Orders-in-Appeal Nos. 48 & 49/2010 (H-II) CE dated 29.10.2010 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-III), Hyderabad)

M/s Aster Pvt. Ltd., ...Appellant(s)

Vs.

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

Appearance
Shri S. Sumanth, Chartered Accountant for the appellant.
Shri Bhanu Kiran, Assistant Commissioner (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: 21/01/2019
Date of Decision: 21/01/2019

FINAL ORDER No. A/30143-30144/2019

[Order per: M.V. Ravindran]

These two appeals are directed against Orders-in-Appeal Nos. 48 & 49/2010 (H-II) CE dated 29.10.2010.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding demand of Central Excise duty on the appellants for the period 10th May, 2008 to 31st March, 2009 on the clearances of 'Zinc Dross' and 'Zinc Powder' on the ground that these goods are liable for Central Excise duty on clearances. It is the case of the Revenue in the

show cause notice that after the introduction of provisions of Section 2(d) of Central Excise Act, 1944 the goods cleared by the appellant are liable to duty of excise as they are sold in the market. It is the case of the appellant before the lower authorities and before the bench is that the appellant is engaged in galvanization process in the manufacture of final products; during the galvanization process 'Zinc Dross' and 'Zinc Dust' emerges as waste products, they cleared the same without payment of duty. It is the submission of the Learned Chartered Accountant that the issue is no more res integra as the Apex Court in the case of *Commissioner of Central Excise Vs. Indian Aluminium Co. Ltd.,* [2006 (203) ELT 3] and in the case of *Collector of Central Excise, Patna Vs. TATA Iron & Steel Co. Ltd.,* [2004 (165) ELT 386] has held that Zinc Dross and Skimmings which emerged during the galvanization process are not excisable; same view has been taken by the Hon'ble High Court of Bombay in the case of *Hindalco Industries Limited Vs. Union of India* [2015 (315) ELT 10] and by the Tribunal in the case of *STL Exports Limited Vs. Commissioner of Central Excise,* [2016 (343) ELT 803] & *National Steel Industries Vs. CCE,* [2004 (165) ELT 386]. It is his further submission that the Hon'ble High Court of Gujarat in the case of *Commissioner of Central Excise Vs. Dhakad Metals Ltd.,* [2010 (257) ELT 535] has also considered the provisions of Section 2(d) of the Central Excise Act and held that excise duty is not payable in Zinc Dross and Zinc Dust merged as waste products the Hon'ble Apex Court in the case of *Grasim Industries Ltd., Vs. Union of India* [2011 (273) ELT 10] has categorically ruled so.

4. On careful consideration of submissions made by both sides and on perusal of records, we find that there is no dispute as to the fact that the demands which have been raised are in respect of Zinc Dross and Zinc Powder which arises during the galvanization process undertaken by the appellant. We find the law is now settled by the various decisions as has been cited by the Learned Chartered Accountant. In view of the above, we hold that the impugned order that confirms the demands raised along with interest and penalty are unsustainable and liable to be set aside and we do so. Impugned orders are set aside and the appeals are allowed.

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

P. VENKATA SUBBA RAO	**M.V. RAVINDRAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Lakshmi….