IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/302/2010

Arising out of Order-in-Appeal No. 03/CE/BBSR-II/2010 dated 28.01.2010 passed by the Commissioner (Appeals) of Central Excise, Customs & Service Tax, Bhubaneswar.

M/s Hindalco Industries Ltd.

….Appellant (s)

Vs.

Commissioner of Central Excise, BBSR-II

….Respondent (s)

Appearance:
Shri Deepro Sen, Adv. & Shri Rishi Raju, Advocate for the Appellant (s)
Shri S. Mukhopadhyay, Suptd. (AR) for the Respondent(s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing/Decision: - 18.09.2018

ORDER No…FO/A/77253/2018

Per Bench:

The issue involved in the instant appeal is whether 'aluminium dross and skimmings' which is a waste product arising in the course of manufacture of aluminium products is liable to excise duty.

2. Brief facts of the case are that the Appellant is engaged in the manufacture and sale of Aluminium products classifiable under Chapter 76 of the First Schedule to the Central Excise Tariff Act, 1985. During the process of manufacture of Aluminium products, Aluminium dross and skimmings were generated and the same were cleared without

payment of duty being waste products. Show Cause Notice dated 27.05.2009 for the period May 2008 to December 2008 were issued to the Appellant seeking recovery of the duty on clearance of Aluminium Dross on the ground that the same was excisable as Aluminium Dross was 'marketable' in terms of the explanation added to Section 2(d) of the Central Excise Act, 1944 (w.e.f. 10.05.2008). The demand in the Show Cause Notice was confirmed by the Adjudicating Authority vide Order-in-Original dated 10.11.2009 which confirmed the demand of Rs.5,09,838/- as against excise duty of Rs.5,83,357/- proposed in the Show Cause Notice. The Order-in-Original also imposed penalty of Rs.1,25,000/- Appeal against the Order-in-Original was dismissed by the Ld. Commissioner (Appeals) vide Order-in-Appeal dated 28.01.2010. Hence, the present appeal before the Tribunal.

3. The Ld. Advocate appearing on behalf of the Appellant submitted that the issue involved in the present case has already been settled in favour of the Appellant by Hon'ble Bombay High Court, in the Appellant's own case-Hindalco Industries Ltd Vs. UOI reported as 2015 (315) ELT 10 (Bom.), wherein, it has been held that aluminium dross, not being a result of any process, is not covered within the definition of manufacture under Section 2(f) of the Central Excise Act, 1944.

The Ld. Advocate also submitted that the Hon'ble Supreme Court in the matter of Union of India & Ors. Vs. DSCL Sugar Ltd. 2015 (322) ELT 769 (S.C.), has held that waste product/residue, which itself is not the result of any process, cannot be treated as falling within the definition of Section 2(f) of the Act and in the absence of manufacture, there cannot be any excise duty.

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4. It was further submitted that in view of the judgments in the case of M/s DSCL Sugar ltd. and M/s Hindalco Industries Ltd. (Supra), a CBEC Circular bearing No. 1027/15/2016-CX, dated 25.04.2016 has been issued which has rescinded, inter alia earlier CBEC Circular No. 904/24/09-CX dated 28.10.09. The relevant part of the Circular is reproduced below for ready reference.

> "Excisability of bagasse and similar other by-products or waste arising during the course of manufacture of an excisable product has been an issue under dispute. Following circulars/instruction have been issued from time to time on the subject:-
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> (a) Circular No. 904/24/09-CX dated 28.10.2009 [2009 (243) ELT T9)]
>
> (b) Circular No. 941/02/2011-CX, dated 14.02.2011 [2011 (264) ELT (T21)].
>
> (c) Instruction F. No. 17/02/2009-CX (Pt.), dated 12.11.2014 [2014 (309) ELT (T16)].
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> 2. The issue came before the Hon'ble Supreme Court in a case of M/s Union of India and Ors Vs. M/s. DSCL Sugar Ltd. [2015-TIOL-240-SC-CX=2015 (322) ELT 769 (S.C.)]. Dated 15.07.2015. Hon'ble Supreme Court examined the issue and reaffirmed that bagasse is not a manufactured product. The Judgment applies to both periods, before and after the insertion of explanation in Section 2 (d) of the Central Excise Act, 1944 by the Finance Act, 2008. It may also be noted that Hon'ble High Court of Bombay in case of M/s Hindalco Industries Ltd. Vs. Union of India [2015 (315) E.L.T. 10 (Bom)] came to similar conclusion in relation to dross and skimming of aluminium, Zink or other non-ferrous metal.
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> 3. In the light of the above dudgments, circulars of the Board on the subject vis, 904/24/09-CX, dated 28.10.2009, 941/02/2011-CX, dated 14.02.2011 and instruction issued vide

F. No. 17/02/2009-CX (Pt.), dated 12.11.2014 have becom non est and are hereby rescinded. Cases kept in Call Book on the above issue may be taken out and adjudicated"

5. The Ld. D.R. fairly concedes that the issue is now covered in favour of the Appellants.

6. Thus, in view of the aforesaid orders of the Hon'ble Supreme Court and Hon'ble High Court of Bombay and also CBEC Circular No. 1027/15/2016-CX, dated 25.04.2016, the issue now stands settled in favour of the Appellant as it becomes abundantly clear that Aluminium dross, being a waste product emerging during the manufacture of Aluminium products, cannot be subject to excise duty. Therefore, the impugned order is liable to be set aside.

7. Accordingly, we set aside the impugned order and the appeal is allowed with consequential relief, if any to the appellants.

(Dictated and pronounced in the open court.)

(Bijay Kumar)
Member (Technical)

(P. K. Choudhary)
Member (Technical)

Tushar Kr.

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