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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.482 of 2010

(Arising out of Order-in-Original No.CCE/COMMR./KOL-I/ADJN/NO.2/2010 dated 29.03.2010 passed by Commissioner of Central Excise, Kolkata-I.)

M/s. Tekno Valves
(1, Chitpur Ghat Lane, Kolkata-700002.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-I

.....Respondent

(180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

<u>APPEARANCE</u>

NONE for the Appellant (s)

Shri S.S.Chattopadhyay, Authorized Representative for the Respondent

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

<u>FINAL ORDER NO. 75249/2023</u>

DATE OF HEARING : 17 April 2023
DATE OF DECISION : 17 April 2023

Per : P.K. CHOUDHARY :

When the matter was called, none appears on behalf of the Appellant. No prayer for adjournment has been received. Since the Appeal is an old one, pertaining to the year 2010, the same is taken up for hearing with the consent of the Ld.Authorized Representative for the Department.

2. The facts of the case in brief are that the Appellant is a manufacturer of 'Gas Valves' and 'Brass Boring/Scrap' from brass rods for gas cylinders falling under Chapter 84 and 74 respectively of the first schedule to the Central Excise Tariff Act, 1985.

3. During the course of manufacture of the valves, scrap is generated. The scrap is sent to their job-worker. The job-worker makes brass rods out of the brass scrap. The job-worker availed CENVAT Credit on scrap and paid duty on the brass rods. The Appellant after receipt of the brass rods from the job-worker, availed CENVAT Credit on the brass rods and used it again in the manufacture of gas valves. It is the case of the Appellant that the Ld.Commissioner has arrived at the value of scrap by deducting charges from the price of prime brass rods. It is also the case of the Appellant that the whole activity is revenue neutral. In support of their grounds of appeal they have placed reliance on this Tribunal's decision in the case of Orson Holdings Company Ltd. v. Commr. Of Central Excise, Kol-II (Final Order No,S/279/A-341/KOL/09 dated 19.06.2009, whereby the Tribunal while relying upon the decision of the Tribunal in the case of Jain Metal Components Pvt.Ltd. v. Commissioner of Central Excise, Jaipur [1006 (206) ELT 842 (Tri.Del.)] and Larger Bench decision in the in the case of Wyeth Laboratories Ltd. V. Collector [2000 (120) ELT 218 (Tri.-LB)], allowed the Appeal of the assesse on similar facts and circumstances of the case.

4. Ld.Authorized Representative for the Department supports the impugned order and states that waste being a final product duty burden should be discharged.

5. Heard the Ld.Authorized Representative for the Department and perused the appeal records.

6. We find that undisputedly the scrap generated during the manufacture of gas valves from brass rods is sent on payment of duty to the job-worker and job-worker availed credit on the duty paid by the Appellant and thereafter utilized the scrap for manufacture of brass rods and cleared the same to the Appellant on payment of duty and

thereafter the Appellant availed CENVAT Credit on the brass rods manufactured out of brass scrap. We find that the decision of Jain Metal Components Pvt.Ltd. cited (supra) is squarely applicable to the facts and circumstances of the present case in which following the decision of the Larger Bench of the Tribunal in the case of Wyeth Laboratories Ltd. cited (supra), the Tribunal allowed the Appeal in favour of the assesse. Accordingly following the ratio of Jain Metal case cited (supra) and Wyeth Laboratories Ltd cited (supra), we set aside the impugned order and allow the Appeal.

The impugned order is set aside and the Appeal filed by the Appellant is allowed.

(Operative part of the order was pronounced in the open Court.)

Sd/

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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