IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO. 2

Excise Miscellaneous Application No. 75799 of 2023 (EH)
In
Excise Appeal No. 75247 of 2018

(Arising out of Order-in-Original No. 19/Commissioner/CE/Haldia/Adjn/2017 dated 20.10.2017 passed by the Commissioner of Central Excise, Haldia.)

M/s. TATA Steel Limited
(Pathikhali, P.O. Haldia Oil Refinery, Haldia, Purba Medinipur, Pin-721606)

...Appellant

VERSUS

Commissioner of Central Excise, Haldia
(15/1, Strand Road, Kolkata – 700 001.)

...Respondent

APPERANCE :
Mr. Deepro Sen & Mr. Shovit Betal, both Advocates for the Appellant
Mr. P.K. Ghosh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDR No. 77529/2023
MISC. ORDER No. 75707/2023

DATE OF HEARING : 21.11.2023
DATE OF DECISION : 21.11.2023

PER : BENCH :

When Early Hearing Petition has taken up both sides agreed that the issue is covered by the Final Order passed in the Appellant's case by this Bench. Therefore, with the consent of the both sides we have taken up the Appeal for disposal.

2. The Ld. Counsel submits that for the earlier proceedings were initiated for the extended period. The Tribunal has decided the issue in their favour as reported in TATA Steel Limited Vs. Commissioner of Central Excise, Haldia 2023 (8) EMI 698 CESTAT Kolkata. He submits that the present proceedings are on account of the periodical notice on the same issue for the period of April 2015 to March 2016.

3. Hence he submits that the present appeal may be allowed. The Ld. Authorized Representative reiterates the findings of the lower authority.

4. After going through the *factual matrix,* we find that the present proceedings are on account of the periodical show-cause notice issued to the Appellant. This Bench vide the decision in the case of TATA Steel Limited cited supra, has held as under :

"14. On careful consideration of the submissions made by both the sides, we find that in this case it is fact that the flue gas is generated during the course of manufacturing of coke. <u>It is not manufactured by the appellant, but it is a waste gas which arises inevitably without beyond the control of the appellant. In that circumstances it is to be seen that the flue gas which was not intended to be produced by the appellant can fulfill the test of manufacture or not.</u>

15. The issue has been examined by the Hon'ble Bombay High Court in the case of Hindalco Industries Ltd. (supra), wherein the Hon'ble High Court observed as under:-

> ***"22.*** *……………………… Waste and scrap emerge as a by-product in the course of manufacture of other products. The whole purpose of making these observations is to justify the conclusion that because there is a reference to these items in the Tariff Entry or the Tariff Schedule that would change the colour of the controversy. That would enable the Tribunal to then hold that the earlier Judgments and in the case of this very Assessee are no longer good law. However, we do not see how the decision in the case of Grasim Industries Ltd. (supra) and particularly the above reproduced paragraphs could have been brushed aside by the Tribunal. The Hon'ble Supreme Court listed the twin tests and which have to be satisfied before the goods can be said to be excisable to tax or Central Excise duty. It is in these circumstances that the attempt of the Tribunal and which is supported before us by Mr. Sethna cannot be upheld. Each of these observations and from para 6.5 onwards run counter to the Judgments of the Hon'ble Supreme Court."*

The said decision has been affirmed by the Hon'ble Apex Court wherein it has been held that <u>"dross and skimming of aluminium, zinc or other non-ferrous metal emerging during manufacture of aluminium/non-ferrous sheets/foils and other products and sold by assessee were not manufactured goods.</u>

17. Further, in the case of Ahmedabad Electricity Co. Ltd. (supra), the Hon'ble Apex Court has held as under :-

> ***"23*** *In the case in hand also . coal which leads to production of cinder is not used as a raw material for the end product. It is being used only for ancillary purpose that is as a fuel. <u>Therefore, irrespective of the fact whether any manufacture is involved in production of cinder it should be held to be out of the tax net for the reason that it is not a raw material for the end product</u>.*

> ***24*** *In producing 'cinder', there . is no manufacturing process involved. Coal is simply burnt as fuel to produce steam. Coal is not tampered with, manipulated or transformed into the end product. For purposes of manufacture the raw material should ultimately get a new identity by virtue of the manufactruing process either on its own or in conjuction or combination with other raw materials. Since coal is not a raw material for the end product in all the cases before us, the question of getting a new identity as an end product due to manufactruring process does not arise.*

In view of the above judicial pronouncements, we hold that the flue gas which is generated in the manufacture of coke is not manufactured product, therefore, duty is not payable. [Emphasis Supplied]

5. Following the ratio of the above case law, we allow the present Appeal with consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pinaki