

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
REGIONAL BENCH – COURT NO.1**

Ex. Appeal No. 451 of 2009

Arising out of Order-in-Original No.28-30/Commissioner/09 dated 30.04.2009 passed by Commissioner of Central Excise, Jamshedpur.

Commr. of Central Excise, Jamshedpur
(143, New Baradwari, Sakchi, Jamshedpur, 831001)
VERSUS

Appellant

M/s. Indian Steel & Wire Products Ltd.
(Indira Nagar, Jamshedpur)

Respondent

With

Ex. Appeal No. 452 of 2009

Arising out of Order-in-Original No.28-30/Commissioner/09 dated 30.04.2009 passed by Commissioner of Central Excise, Jamshedpur.

Commr. of Central Excise, Jamshedpur
(143, New Baradwari, Sakchi, Jamshedpur, 831001)
VERSUS

Appellant

M/s. Indian Steel & Wire Products Ltd.
(Indira Nagar, Jamshedpur)

Respondent

APPEARANCE :

Shri Joydeep Chattopadhyay, Authorized Representative for the Appellant
None for the Respondent

CORAM:

**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

FINAL ORDER NO.75401-75402/2022

Date of Hearing : 26.07.2022
Date of Decision : 26.07.2022

PER SANJIV SRIVASTAVA :

These appeals have been filed by the Revenue against Order-in-Original No. 28-30/Commissioner/09 dated 30.04.2009 passed by Commissioner of Central Excise, Jamshedpur. By the impugned order, the Commissioner has dropped the proceedings initiated by the Show Cause Notice as indicated in the table below:-

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SI No.	SCN No. & date	Amount of C.E.D.	Period
1.	MP-13/SCN/ISWP/Telco-III/97/449 dtd. 29.5.97	Rs.8,29,962.91	Dec '96 to March '97
2.	MP-13/SCN/ISWP/Telco-III/97/737 dtd. 15.09.97	Rs.36,28,081	April'97 to July'97

2.1 Appellant had entered into an agreement with TISCO for conversion of billets into wire rods for job of basis. After during the course of conversion, certain losses, such as burning losses occurred to the extent of 7%. Accordingly, appellants were required to return 90 tonnes of wire rods after conversion against every 100 tonnes of billets provided by TISCO. Whatsoever, waste arises during the course of conversion was also cleared by the appellant on payment of appropriate duty. The Revenue has issued Show Cause Notices alleging that the wire rods which were cleared from the premises of the appellants on the prices determined by the TISCO to the customers of the TISCO. However, while clearing they have not accounted for the waste and scrap that was arising during the process of conversion and retained by them. By addition of the value of such waste and scrap cleared by the appellant, the demand has been made.

2.2 Commissioner dropped the impugned show cause notices against which the Revenue is in appeal. In the ground of appeal, they have stated as follows:-

6. As per the terms and conditions between the job worker i.e. the assessee M/s. ISWP Ltd., Jamshedpur and M/s TISCO, the assessee were allowed to retain wastages @10% on the supplied billets without any payment to M/s TISCO. This was in addition to the conversion charges to be paid to the job worker by its principal. Since no payment was payable for such left out material by the job worker to its principal, it will amount to additional consideration in addition to conversion charges. Such additional consideration ought to have been included while arising at the assessable value of the finished product as per section 4 of the Central Excise Act, 1944.

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7. Though, it was pointed out by the audit that the same was not included in the assessable case, the adjudicating authority did not throw any light as to whether the same was actually included in the assessable value or not rather, he concluded that all the cost must have been included in the assessable value, since it was fixed by the principal, i.e. M/s TISCO. The adjudicating authority did not mention any such instance which could prove that such extra consideration formed part of the assessable value fixed by M/s TISCO. Purely on assumption, he concluded that all such costs were included in the assessable value. There appears no evidence on record to suggest that the same were included in the assessable value.

8. The adjudicating authority also erred in placing reliance upon the CEGAT decision in the case of Surindra Steel Rolling Mills-Vs-CCE, Chandigarh. In the said decision, it was held that the assessable value included all the cost incurred upto final sale of goods, but in the instant case, it was presumed that it must have included the said costs, since it was fixed by M/s TISCO. Thus, placing reliance upon the said decision of the CEGAT, by the Adjudicating is not convincing.

3.1 None appeared for the respondents as was the case during hearing dated 29/03/2019, 6/08/2019, 18/01/2022, 21/01/2022. None was appeared for the respondent so in terms of Rule 21 of CESTAT procedure rule reproduced below, the matter has been taken up for decision after hearing the appellant revenue.

RULE 21. Hearing of appeals ex parte.-Where on the day fixed for the hearing of the appeal or any other day to which the hearing is adjourned the appellant appears and the respondent does not appear when the appeal is called on for hearing, the Tribunal may hear and decide the appeal ex parte.

4.1 We have heard Shri Joydeep Chattopadhyay, Authorized Representative for the Revenue who reiterates the grounds taken by the Revenue in the appeal filed.

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4.2 We have considered the impugned orders along with submissions made in appeal and during the course of arguments.

4.2 Undisputedly in the present case, the goods and wire rods have been cleared for payment of duty on the value fixed by the TISCO for whom appellants have performed the job work. Since the value adopted was the clearance of the goods as fixed by TISCO for the customer of Tisco it would have taken into account all the wastes including the value of waste and scrap retained by the appellants. All the components going into the value would have thus formed part of the assessable value for such clearances. It is not the case that job work charges have been suppressed to the extent of the value of waste and scrap in the present case as goods have been cleared on actual value fixed by TISCO.

4.3 Similar view has been held by the Tribunal in case of Surindra Steel Rolling Mills Vs. Commissioner, reported in 2003 (155) E.L.T. 357 (Tri.Del) which has been confirmed by Hon'ble Punjab and Haryana High Court as reported in 2008(226)ELT A-182 (P&H).

5.1 We do not find any reason to defer from the said decision. In the result, there is no merit in the appeal. Impugned order is upheld and appeal filed by the Revenue is dismissed.

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

Sd/-
(Sanjiv Srivastava)
Member (Technical)

Sd/-
(P. Dinesha)
Member (Judicial)

Pooja