IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. II

Appeal No. E/325 & 326/2010

(Arising out of Order-in-Appeal No. VSK/3 & 4/Th-I/2009 dated 20.11.2009 passed by the Commissioner of Central Excise (Appeals), Mumbai-I).

M/s JSW Steel Ltd.	Appellant

Vs.

Commissioner of Central Excise, Thane-I	Respondent

Appearance:

Ms. Manasi Patil, Advocate	for Appellant
Shri M.R. Melvin, Supdt. (AR)	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI C.J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing: 26.03.2018

Date of Decision: 19.04.2018

ORDER NO. **A/86133-86134/2018**

Per: Ramesh Nair

The facts of the case are that the appellants are engaged in the manufacture of excisable goods falling under Chapter 72 of the Central Excise Tariff Act, 1985. The appellants cleared four samples from each batch of Galvanized Cold Roll Coils in the form of white strips. These samples were taken for testing purpose. All such tested samples, after being tested for bending, locking properties and for extent of galvanization, are preserved till final disposal of the respective GP Coils in the market, with a view to redress market complaints, if any. The same are accumulated till a sizeable quantity, and then the same are cleared on payment of duty as scrap. The case of the department is that the samples drawn is a finished goods and the same was used captively, therefore, such clearances should be made following the valuation principles in terms of Rule 4 by virtue of Rule 11 of Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000. Therefore, the appellants have paid the short duty. The adjudicating authority confirmed the demand. Being aggrieved by the Order-in-Original, the appellant filed an appeal before the Commissioner (Appeals), who dismissed the appeal. Therefore, the appellants are before us.

2. Ms. Manasi Patil, learned Counsel appearing on behalf of the appellant submits that since the sample drawn from a finished goods has been cleared on payment of duty, being scrap material, no further duty can be demanded. The sample was drawn captively for testing purpose as per the requirement of ISO 2000. Therefore, even the testing is also in relation to the manufacture of final product. When the goods were cleared as scrap, duty of fresh final product cannot be demanded. She further relies on the following judgments: -

(a) *Hindustan Unilever Ltd. & Others Vs. Commissioner of Central Excise, Pune-II – 2016-TIOL-914-CESTAT-MUM.*

(b) *Bhansali Engg. Polymers Ltd. Vs. Commissioner of Central Excise, Indore – 1999 (114) ELT 947 (Tri) upheld by Hon'ble Supreme Court reported at – 2002 (143) ELT A175 (SC).*

(c) *J.K. Industries Ltd. Vs. Commissioner of Central Excise, Jaipur – 2003 (156) ELT 437 (Tri-Del).*

3. Shri M.R. Melvin, learned Supdt. (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He

submits that in terms of para 3.2 to Chapter 11 of CBE&C's Manual, it is provided that the sample drawn for testing should be accounted for in the stock account and appropriate duty shall be paid by the assessee on such samples before removal for testing purpose unless thereby exempted by duty exemption notification. Therefore, the appellant should have paid the duty while drawing the sample of the finished goods as per the correct value in terms of Central Excise Valuation Rules, 2000.

4. We have carefully considered the submissions made by both sides and perused the records. We find that the appellant have drawn the sample captively within the factory for testing purpose, since the goods were not cleared from the factory, no duty was required to be paid and as and when the sample was cleared, the same was cleared in the form of waste and scrap and excise duty was paid on the transaction value of such waste and scrap. In this fact, there is no question of demanding duty on the captive consumption of sample for testing. The very same issue has been considered by this Tribunal in the case of *Bhansali Engg. Polymers (supra),* wherein it was held that sample drawn before the RG-1 stage, the duty on the samples drawn for the testing is not liable. This judgment has been affirmed by the Hon'ble Supreme Court.

4.1 A similar issue has been considered by this Tribunal in the case of *J.K. Industries (supra),* wherein it was held that samples of tyres drawn for in-house testing in accordance with BIS Manual, destroyed during testing, test being essential for making the goods marketable in absence of which the goods cannot be sold and they cannot be treated as marketable, held duty not chargeable. In facts of the present case also, the sample was drawn by the appellant for the purpose of testing in accordance with the requirement of ISO 2000. The appellant's case is on the better footing that the sample tested were subsequently cleared as waste and scrap on payment of duty. The similar view was taken by this Tribunal in the case of *Hindustan Unilever Ltd. (supra),* wherein it was held that sample drawn from each batch for testing in the in-house laboratory are not liable to Central Excise duty. The Tribunal while deciding this case relied upon the judgment of Hon'ble Supreme Court in the case of *Mahavir Aluminium Ltd. Vs. Commissioner of Central Excise, Jaipur – 1999 (114) ELT 371 (SC), Paper Product Ltd. Vs. CCE – 2002-TIOL-84-SC-CX and ITC Ltd. – 2003 (151) ELT 246 (SC).*

4.2 It is also observed that in the appellant's own case on the similar issue, the Commissioner (Appeals) vide Order-in-Appeal No. CPA/10-13/Th-I/07 dated 1.8.2007 allowed the appeals of the appellant, which has not been appealed against as submitted by the appellant.

5. Having considered the above observations and the judgments, we find that the duty on the sample drawn for testing is not sustainable. Accordingly, the impugned orders are set aside and appeals are allowed.

(Pronounced in Court on 19.04.2018)

(C.J. Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Sinha