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

APPEAL No. E/141/2011

(Arising out of Order-in-Appeal No. M-I/AV/235/2010 dated 17.9.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

Rashtriya Metal Inds. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Mumbai-I **Respondent**

Appearance:

Shri Mehul Jivani, C.A., for appellant
Shri Sanjay Hasija, Superintendent (AR), for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 29.11.2018
Date of Decision: 29.11.2018

ORDER No. A/88068/2018

Per: Dr. D.M. Misra

This is an appeal filed against order-in-appeal No. M-I/AV/235/2010 dated 17.9.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-I.

2. Briefly stated the facts of the case are that the appellant is engaged in the manufacture of excisable goods viz. copper sheet, zinc, tin, copper nickel etc.

falling under Chapter 74 of the Central Excise Tariff Act, 1985. During the relevant period i.e. in the year 2003-04, the appellant entered into an agreement with Ministry of Finance and Company Affairs, Government of India for supply of cupro nickel coils to the Indian Government Mint, Hyderabad. As per the said agreement, the freight amount charged was Rs.1,250/- and insurance charges @ Rs.665/- per MT. However, later it was found that the insurance amount paid to the insurance company was less than the amount collected. Accordingly, show cause notice was issued to the appellant to recovery duty on the differential insurance amounting to Rs.78,061/- with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed appeal with the Commissioner (Appeals) who, in turn, rejected their appeal. Hence, the present appeal.

3. Learned Chartered Accountant for the appellant submits that the issue is covered by the judgment of the Hon'ble Supreme Court in the case of *Baroda Electric Meters Ltd. vs. CCE – 1997 (94) ELT 13 (SC)*, *Bajaj Auto Ltd. vs. CCE, Aurangabad – 1998 (100) ELT 289 (Tribunal)*, upheld by the Hon'ble Supreme Court reported as *CCE, Aurangabad vs. Bajaj Auto Ltd. – 1999 (106) ELT A191 (SC)*, *Yamuna Motors India Pvt. Ltd. vs.*

CCE, Noida – 2014 (301) ELT 524 (Tri.-Del.) and *Indian Oil Corporation Ltd. vs. CCE, Ahmedabad – 2013 (291) ELT 449 (Tri.-Ahmd.)*.

4. Learned AR for the Revenue reiterated the finding of the learned Commissioner (Appeals). Further, the learned AR cited the judgment of the Tribunal in the case of *JCT Ltd. vs. CCE, Jalandhar – 2013 (291) ELT 115 (Tri.-Del.)*.

5. Heard both sides and perused the records.

6. We find that undisputedly, the appellant has entered into a contract with Ministry of Finance and Company Affairs, Government of India for supply of cupro nickel and accordingly, the price was fixed ex-factory. The freight and insurance was recoverable from the buyer at an agreed price. However, the insurance amount collected by the appellant from their customers was in excess than paid to the insurance company. The said amount was proposed to be charged to excise duty. We find that this issue is no more *res integra* and covered by the aforesaid judgments cited by learned C.A. for the appellant. The circumstances narrated in *JCT Ltd.*'s case is totally different. Hence, the observation recorded in the said judgment cannot be made applicable to the facts of the present case.

7. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

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