CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 794 of 2011
Excise Cross Objection No. 40 of 2011

(Arising out of Order-in-Original No. 09-10/ANS/2010-11 dated 31.01.2011 passed by the Commissioner of Central Excise, Mumbai-III)

Commissioner of Central Excise, Mumbai-III **.... Appellant**

Versus

M/s Indian Smelting & Refining Co. Ltd. **.... Respondent**

Appearance:

Shri R.K. Dwivedy, ADC, Authorized Representative for the Appellant

Shri S.S. Gupta, C.A. for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85710 / 2019

Date of Hearing: 19.02.2019

Date of Decision: 19.02.2019

Per: Dr. D.M. Misra

This appeal is filed by the Revenue against Order-in-Original No. 09-10/ANS/2010-11 dated 31.01.2011 passed by the Commissioner of Central Excise, Mumbai-III.

2. Briefly stated the facts of the case are that the respondent had undertaken job-work for various customers, who supply them scraps and they convert the same into bars,

strips etc and cleared the job-worked goods to the principal manufacturer on payment of duty arrived at taking into consideration the value of the copper scraps as declared by the principal manufacturer, octroi charges, freight, melting losses, conversion charges and 4% as contingency expenses. Alleging that the value of the copper scrap declared by the principal manufacturer and considered in discharging duty by the respondent job-worker is lower than the actual market value, a show-cause notice was issued for recovery of the differential duty of Rs.1,54,68,325/- for the period from April, 2005 to December, 2009 with interest and penalty. On adjudication, the demand was dropped by the adjudicating authority. Hence, the Revenue is in appeal.

3. Reiterating the grounds of appeal, the learned AR for the Revenue has submitted that the price of the copper scrap as declared by the principal manufacturer and considered by the respondent is incorrect as the price of copper scrap sold by the dealers were much higher. He submits that the learned Commissioner did not take into consideration the comparative price of the scrap in arriving at the value of the copper scrap in the hands of the respondent while ascertaining the assessable value of the job-worked goods.

4. Learned C.A. Shri S.S. Gupta for the respondent submits that the value declared by the principal manufacturer of the copper scrap on which duty has been paid and the respondent availed CENVAT Credit on the same was considered for the

purpose of determination of value of the job-worked goods on the basis of the formula laid down in M/s Ujagar Print's case. He submits that no show-cause notice has been issued to the supplier of raw material indicating suppression of the actual value of the copper scrap supplied to the respondent. Hence, disputing the value of the copper scrap at their end is contrary to the principles of law laid down by the Hon'ble Supreme Court in the cases of *Sarvesh Refractories (P) Ltd. – 2007 (218) ELT 488 (SC), MDS Switchgear Ltd. – 2008 (229) ELT 485 (SC) and Commissioner of Central Excise, Mumbai Vs. Lajya Dyeing & Bleaching Works – 2008 (224) ELT 345 (SC)* and the Tribunal in the case of *Tata Oil Mills Co. Ltd. – 1997 (91) ELT 144 (T).*

5. We have carefully considered the submissions advanced by both sides.

6. The short issue involved in the present appeal for determination is whether the value of copper scrap declared by the raw material supplier for job work would be revised at the end of the job-worker. Undisputedly, the respondent has availed the CENVAT Credit of duty paid on the scrap by the principal manufacturer and there is no objection raised by the jurisdictional Commissionerate on the value declared by the principal manufacturers. We find that the issue is no more *res integra* and covered by the principles laid down by the Hon'ble Supreme Court in of *MDS Switchgear Ltd.'s case* and *Sarvesh Refractories (P) Ltd.'s case* laying down the principle that

value of the raw material declared by the principal manufacturer cannot be questioned in the hands of the receiver unless there is allegation of connivance or collusion between the raw material supplier and receiver of the same is established. In the present case, no such allegation is forthcoming. Also, no proceeding has been initiated against the principal manufacturer who supplied the copper scrap for job-work to the respondent alleging undervaluation of the scrap. In these circumstances, we do not find justification to interfere with the findings of the adjudicating authority. Hence, the impugned order is upheld and Revenue's appeal being devoid of merit is dismissed.

(Dictated and pronounced in open court)

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

(P. Anjani Kumar)
Member (Technical)

Sinha