**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**MUMBAI**

**REGIONAL BENCH – COURT NO.1**

**Excise Appeal No.173 of 2012**

[Arising out of Order-in-Appeal No.US/460/RGD/2011, dt.09.12.2011, passed by the CCE (Appeals), Mumbai]

**M/s Maharashtra Seamless Ltd,** ......**Appellant**
Pipe Nagar, Sukeli, N.H. 17, BKG Road,
Tal.: Roha, Dist: Raigad

VERSUS

**Commissioner of Central Excise,** ......**Respondent**
Raigad Commissionerate,
4th Floor, Utpad Shulk Bhavan,
Plot No.1, Sector-17, Khandeshwar,
New Panvel 410 206

**Appearance**:
For Appellant : Shri Sachin Chitnis, Advocate
For Respondent : Shri Ajay Kumar, ADC (AR)

**CORAM:**
**HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)**
**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.A/86592/2019**

Date of Hearing: 30.08.2019
Date of Decision: 30.08.2019

**PER: DR.D.M. MISRA**

This is an appeal filed against Order-in-Appeal No.US/460/RGD/2011, dt.09.12.2011, passed by the CCE (Appeals), Mumbai.

2. Briefly stated the facts of the case are that the Appellants are engaged in manufacture of excisable goods falling under Chapter 73 of Central Excise Tariff Act, 1985. The Appellants had availed CENVAT Credit of the duty paid on Zinc Dross which were used in

the manufacturing process i.e. Galvanisation of Seamless pipes and ERW pipes. During the process of such galvanisation, Zinc Dross and Zinc Ash etc generated as a by-product were cleared by the Appellant without of payment of Central Excise duty. Alleging that such Zinc Dross, Zinc Ash etc is chargeable to duty, consequently demand notices were issued for recovery of the duty short paid amounting to Rs.36,48,510/- during the period March 2005 to March 2008. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. The learned Advocate for the Appellant has submitted that the issue of chargeability of Excise duty on Zinc Dross and Zinc Ash is no more res integra being covered by the judgment of Hon'ble Bombay High Court in the case of Hindalco Industries Limited Vs UoI – 2015 (315) ELT 10 (Bom.)and Bajaj Auto Ltd Vs CCE Aurangabad – 2015 (322) ELT 419 (SC). Further, he has referred to the judgment of Hon'ble Supreme Court in the case of UoI Vs DSCL Sugar Ltd – 2015 (322) ELT 769 (SC), wherein it has been held that emergence of waste and residue viz. Baggasse cannot be subjected to duty being not result of the process of manufacture even though it is held to be marketable accordingly covered within the definition of Section 2(d) of Central Excise Act, 1944.

4. The learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. We have carefully considered the submissions advanced by both sides. We find that a limited issue for determination in the present appeal is whether the Zinc Dross and Zinc Ash emerged during the process of galvanisation be subjected to duty. We find that the issue is no more res integra and is covered by the judgment of Hon'ble Supreme Court in the case of Bajaj Auto Ltd (supra) and DSCL Sugar Ltd (supra). Also, Hon'ble Bombay High Court in Hindalco Industries Ltd's case (supra), held that Dross and skimming of Aluminum arising as a by-product during the course of manufacture of aluminium/non-ferrous sheets/foils etc are not leviable to Excise duty.

6. In view of the aforesaid judgments, we do not find merit in the impugned Order-in-Appeal and set aside the same and allow the appeal with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

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

**(Sanjiv Srivastava)**
**Member (Technical)**

Bahalkar