CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Excise Appeal No. 845 of 2011

(Arising out of Order-in-Appeal No. SB(24) 24/MV.2011 dated 28.02.2011 passed by the Commissioner of Central Excise(Appeals), Mumbai)

M/s Tata Steel Limited ....Appellant
(Wire Division)
Dattapada Road,
Borivali (E), Mumbai-400066

VERSUS

Commissioner of Central Excise, Mumbai ....Respondent
5th Floor, Utpad Shulk Bhavan,
Plot No. C-24, Block 'E' Bandra-Kurla
Complex, Bandra (East) Mumbai-400051

APPERANCE:

Shri Rajesh Ostwal, Advocate for the Appellant
Shri Anil Chaudhary, Assistant Commissioner Authorised Representative for the Respondent

CORAM:

HON'BLE C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87413/2019

Date of Hearing: 28.01.2019
Date of Decision: 28.01.2019

PER: AJAY SHARMA

The demand involved in this Appeal is only Rs.2,115/- with interest and penalty. The issue is about the undervaluation of Waste Pickle Liquor (WPL) which arises during the pickling process i.e. process of removing impurities & rust on the Wires manufactured by the Appellant.

2. The Appellants are engaged in manufacture of various Wires and are availing Cenvat Credit on inputs, capital goods and input services. They received wire rods coils and also hydrochloric acid in order to remove the impurities and rust from the wire rods coils. For removing the impurities etc. the Appellants undertake the pickling process by using hydrochloric acid. The wire rods coils are dipped in the hydrochloric acid tank. Waste Pickle Liquid (WPL) is generated during the process at various steel plants of the appellants at the time of removal of impurities/rust from the coil. The Appellants used to clear WPL to independent buyers on payment of duty on the value determined on the basis of the price at which the appellants had sold the WPL to the independent buyers and the said price was Re.1 per ton. The appellants entered into processing agreement dated 28.4.2000 with M/s. Indrox Global Pvt. Ltd. (in short "Indrox") for the regeneration of hydrochloric acid from the aforesaid WPL. As per the agreement, the WPL is cleared by the appellants to Indrox on payment of excise duty on the assessable value of WPL @ Re.1/- per ton, who process the same at their plant and charged the WPL in the chemical reactor and two products viz Hydrochloric Acid (in short "HCL") and Ferric Oxide are generated. The HCL so recovered is supplied back to the appellants on payment of Central Excise duty as per the agreement and so far as Ferric Oxide is concerned, as per the terms of the agreement Indrox sells it (fully exported) and 50% of the proceeds thereof are retained by Indrox and remaining 50% are to be paid to the appellants by way of issuing credit notes to them. As per the department, during the period October, 2008 to

September, 2009 Indrox have issued various credit notes amounting to Rs.10,091/- to the appellants which is nothing but additional consideration received in terms of Rule 6 of Valuation Rules, 2000 and as such the clearance value i.e. Re.1/- per M.T. appears to be an undervaluation and therefore the department issued show cause notice dated 30.10.2009 to the Appellants demanding Rs.2,115/- being the differential duty with interest and penalty. The said demand was confirmed by the Adjudicating Authority with equal penalty vide Order-in-Original dated 4.8.2010. First Appeal filed by the Appellants was rejected by the Commissioner (Appeals), Central Excise, Mumbai Zone-I vide Order-in-Appeal dated 28.2.2011.

3. We have heard learned counsel for the Appellants and learned Authorised Representative for the Revenue and perused the Memo of Appeal filed by the Appellants. In order to understand the issue we have to see what is WPL? Is it a waste or some manufactured product? According to learned counsel, the rust and impurities on the coils are simply removed by way of application of hydrochloric acid on the coil. This process of application of hydrochloric acid on the coil is called pickling process. After undertaking the pickling process the mixture of hydrochloric acid and the impurities and rust, is termed as WPL. Such WPL is nothing but waste which is not emerging by the process which amounts to manufacture. Therefore, WPL is not a manufactured good and hence not excisable good at all. Hence, no duty is liable to be paid for WPL. In support of his submission learned counsel relied upon the decision of the co-ordinate Bench of the Tribunal in the matter of *Indian Tube Co. Ltd. v. CCE; 1988 (37) ELT*

418. We have gone through the said decision in which this Tribunal had considered the issue whether WPL is an excisable good? On two grounds the Tribunal took the view that WPL is not excisable. The first ground was that waste pickle liquid is not in the nature of a valuable by-product arising during the course of manufacture of some other goods. The second was that diluted sulphuric acid used in the pickling process loses its efficacy since it becomes unfit for further pickling, it has to be discarded. The aforesaid decision of the Tribunal was challenged by Revenue before the Hon'ble Supreme Court but the same was dismissed by the Hon'ble Supreme Court as reported in *1995(77)ELT 21(SC)*. From the aforesaid decision it is evident that WPL is not an excisable good and is only a waste generated during the manufacture of another product. In the instant matter also WPL emerges during the pickling process whereby hot rolled coils are passed through the hydrochloric acid bath/tank to remove the scales formed on the surface of such hot rolled coils. The Revenue sought to recover the amount of Rs.1,215/- from the Appellants since according to them 50% of sale proceeds received by the appellant from Indrox by way of credit note is the additional consideration received in terms of Rule 6 of Valuation Rules, 2000. After going through Rule 6 ibid we are of the view that for the purpose of its application the goods have to be *excisable goods*. But since it has already been held by the Tribunal in the matter of *Indian Tube Co. Ltd.* (supra) that WPL is not an excisable good, which was later on affirmed by the Hon'ble Supreme Court, therefore Valuation Rules, 2000 has no application on the facts of this case. That being so, the question of undervaluation or otherwise of WPL does not arise and as a result the demand raised in the show cause notice dated 30.10.2009 cannot be sustained.

4. In view of the discussions made hereinabove, the appeal filed by the Appellant is allowed with consequential relief, if any.

(Order pronounced in the open Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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