CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Excise Appeal No: 986 of 2011

[Arising out of Order-in-Appeal No: YDB/413/RGD/2011 dated 19th April 2011 passed by the Commissioner of Central Excise (Appeals), Mumbai – II.]

Uttam Galva Steels Ltd
Village Donvat, Khopoli-Pen Road, Taluka-Khalapur,
Dist: Raigad … ***Appellant***

versus

Commissioner of Central Excise
Kendriya Utpad Shulk Bhavan, Plot No.1, Sector -17
Khandeshwar, Navi Mumbai – 410 206 ***…Respondent***

APPEARANCE:

Ms Rinky Jassuja, Advocate for the appellant

Shri NN Prabhudesai, Superintendent (AR) for the respondent

CORAM:

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

FINAL ORDER NO: A/87587 / 2019

DATE OF HEARING: 18/07/2019
DATE OF DECISION: 18/07/2019

PER: C J MATHEW

The issue in this appeal of M/s Uttam Galva Steels Ltd against order-in-appeal no. YDB/413/RGD/2011 dated 19th April 2011 is the fastening of duty liability of ₹ 30,82,563 under section 11A of Central Excise Act, 1944, along with appropriate interest under section 11AB of Central Excise Act, 1944, besides imposition of like amount as penalty under rule 25 of Central Excise Rules, 2002 for failing to discharge duty liability on clearances of ‘zinc dross’ between December 2007 and June 2008. It is the case of the central excise authorities that the impugned goods are chargeable to duty at the rate corresponding to heading no. 7902 of Schedule to Central Excise Act, 1944.

2. It is seen from the impugned order that the first appellate authority had applied the test of marketability and enumeration in the Schedule to Central Excise Tariff Act, 1985 to determine excisability.

3. Learned Counsel for appellant contends that the impugned goods have not emerged from a planned decision to produce those and, being a by-product, cannot be considered as manufacture. Furthermore, according to her, the issues stands settled by the decision of the Tribunal in *Zenith Birla India Ltd v. Commissioner of Central Excise, Raigad [2018-TIOL-927-CESTAT-MUM]* and that several decisions of the Tribunal, including appeals of the appellant herein, have followed the judgement of the Hon’ble High Court of Bombay in *Hindalco Industries Ltd v. Union of India [2015 (315) ELT 10 (Bom)]*. It was further pointed out that the Hon’ble Supreme Court in *Union of India*

v. DSCL Sugar Ltd [2015 (322) ELT 769 (SC)] had rendered a ruling on goods having to conform to 'manufacture' to be excisable.

4. We have heard Learned Authorised Representative.

5. It would appear that the first appellate authority had upheld the order of the original authority in a context in which the judicial rulings cited by Learned Counsel were not available for guidance. The decision of the Hon'ble High Court of Bombay in *re Hindalco Industries Ltd* has settled the issue and, in consequence, Central Board of Excise & Customs *vide* circular no. 1027/15/2016-CX dated 25 April 2016 has communicated the non-excisability of goods including dross.

6. Accordingly, the demand upheld in the impugned order fails the test of law and is set aside.

(Pronounced in open court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*