CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 1879 of 2012

(Arising out of Order-in-Appeal No. PVR/169/NGP/2012 dated 31.10.2012 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur.)

M/s. KEC International Ltd. ....Appellant

KEC International Ltd.
B-190, MIDC Industrial Area,
Butibori, Nagpur – 441 122

VERSUS

Commissioner of Central Excise, Nagpur ....Respondent

GST Bhavan, Civil Lines,
Telangkhedi Road,
Nagpur – 440 001

APPERANCE:

Shri Manoj Chauhan, C.A. for the Appellant

Shri Amrendra Kumar Jha, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85693/2023

Date of Hearing: 28.02.2023
Date of Decision: 28.02.2023

PER: DR. SUVENDU KUMAR PATI

Application of explanation in Section 2(d) of Central Excise Act, 1944 w.e.f. 10.08.2008 on the Appellant Company, by which article material or substance capable of being bought and sold for a consideration, and confirmation of duty liability etc. on it against burnt Zink Ash and Gink Dross generated during galvanisation process needed for manufacturing of transmission line towers, manufactured by the Appellant Company, is assailed in this appeal.

2. We have heard submissions from both the sides and perused the case record. As could be noticed Appellant was put to show-cause notice for the period April, 2009 to January, 2010 demanding duty on those by-products described above generated during manufacturing process. It had contested the same, suffered adjudication process that confirmed the duty demand etc. and after unsuccessful attempt before the Commissioner (Appeals), Appellant is before us.

3. In citing order copy of this Tribunal passed on 16.06.2016 in the final order No. A/88268/2016/EB, learned Counsel for the Appellant submitted that in Appellant's own case for another period on issue has been decided in favour of Appellant holding that no duty is leviable thereon. He further submitted that CESTAT at Delhi also decided the issue with reference to Appellant's own case and the same has been affirmed by Hon'ble Supreme Court in the case of *Hindalco Industries Ltd.* as reported in *2019 (367) ELT A246 (SC).* Further, the case of *Hindalco Industries Ltd.* was preferred against the order of the Hon'ble Bombay High Court and since the same has been accepted by the Department by issue of a Circular No. 1027/15/2016-CX dated 25.04.2016. He, therefore, submits that the appeal of the Appellant deserves to be favourably considered by this Tribunal. Learned Authorised Representative reiterates the findings of the Commissioner (Appeals).

4. Having regard to the fact that issue has attained finality and in carrying forward the judicial precedent set by the Apex Court, we pass the following order.

THE ORDER

5. The appeal is allowed and the order passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur vide Order-in-Appeal No. PVR/169/NGP/2012 dated 31.10.2012 is hereby set aside with consequential relief, if any.

(Operative portion of the order pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad