

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

WEST ZONAL BENCH

Excise Appeal No. 87810 of 2019

(Arising out of Order-in-Appeal No. PVNS/76-77/APPEALS
THANE/TR/2019-20 dated 25.06.2019 passed by the Commissioner
(Appeals Thane), GST & Central Excise, Mumbai)

M/s. APL Apollo Tubes Ltd.Appellant
Plot no. M-I, Additional MIDC
Kudavali Village, Murbad
Thane Dist.

VERSUS

The Commissioner of CGST, Thane RuralRespondent
Utpad Shulk Bhavan, 4th Floor,
Bandra Kurla Complex,
Bandra East, Mumbai

With

Excise Appeal No. 87811 of 2019

(Arising out of Order-in-Appeal No. PVNS/76-77/APPEALS
THANE/TR/2019-20 dated 25.06.2019 passed by the Commissioner
(Appeals Thane), GST & Central Excise, Mumbai)

M/s. APL Apollo Tubes Ltd.Appellant
Plot no. M-I, Additional MIDC
Kudavali Village, Murbad
Thane Dist.

VERSUS

The Commissioner of CGST, Thane RuralRespondent
Utpad Shulk Bhavan, 4th Floor,
Bandra Kurla Complex,
Bandra East, Mumbai

APPEARANCE:

Shri R.S. Sharma, Advocate for the appellant
Shri Xavier Mascarenhas, (AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/86087-86088/2022

DATE OF HEARING : 10.11.2022

DATE OF DECISION : 18.11.2022

Per: AJAY SHARMA

These appeals have been filed challenging the common order dated 25.06.2019 passed by the Commissioner (Appeal) by which the Appeals filed by the appellant were rejected by the learned Commissioner.

2. The facts leading to the filing of the Appeals are stated in brief as follows. The appellants are engaged in manufacturing of MS Black Pipes and Galvanised from Pipes/ Tubes and during its manufacturing process unusable waste/residue in the form of zinc dross, zinc dust and flux skimming are generated which cannot be avoided. The appellant used to sold the said waste/residue in open market. As per department the said waste/residue are exempted goods and hence provisions of Rule 6(3) of Cenvat Credit Rules, 2004 are attracted. Accordingly, two show cause notices were issued to the appellant. First one was dated 26.2.2018 for liability of Rs.24,79,772/- for the period 2015-16 and the second show cause notice was dated 5.4.2018 demanding Rs.28,20,639/- for the period 2016-17 (up to June, 2017) along with interest and equal penalty. The Adjudicating Authority vide separate Orders-in-Original dated 14.12.2018 & 21.1.2019 respectively confirmed the demand with interest & penalty and the same was upheld by the learned Commissioner (Appeal) vide common Order-in-Appeal dated 25.6.2019.

3. Learned counsel for the appellant submits that they are manufacturing pipes and not zinc scrap and that during the

manufacture of excisable goods, unusable waste/residue is generated which is sold as zinc dross/cyclone/ash in the open market. He also submits that Rule 6 *ibid* has no application on the facts of this case. He further submits that the said issue has already been decided in Appellant's own case by the Chennai Bench of the Tribunal and therefore the demand is liable to be set aside on that ground alone. Per contra learned Authorised Representative appearing for revenue reiterated the findings recorded in the impugned order and supported the impugned order.

4. I have heard rival submissions and gone through the Appeal paper book along with the synopsis and case laws filed by the appellant. Both the authorities below while upholding the demand raised, have relied upon the amendment made in Rule 6 *ibid* with effect from 1.3.2015 and came to the conclusion that after the aforesaid amendment w.e.f. 1.3.2015 *zinc dross/flux/skimmings* cleared by the appellant are covered by the provisions of Rule 6 *ibid*. But in my opinion the issue involved herein is no more *res integra* in view of the decision of the co-ordinate Bench (*Chennai Bench*) of the Tribunal in Appellant's own case *M/s. APL Apollo Tubes Ltd. (Unit-II) vs. Commr. GST & CE; Final order No.40925/2019, dated 12.7.2019* in which the Tribunal while dealing with the aforesaid amendment in Rule 6 *ibid* allowed the Appeal filed by the appellant and held that when the zinc scrap, a waste arising out of process of manufacture of finished goods, is not the goods manufactured by the appellant, the same cannot be considered as exempted goods manufactured by them. The relevant portion of the said decision is reproduced hereunder:-

"xxx

xxx

xxx

4. *Heard both sides.*

5. *The issue is whether appellants have to pay an amount of 6% of the value of the zinc scrap cleared by*

them. The department has relied upon Explanation (1) introduced w.e.f. 01.03.2015 to demand the duty raised in the SCN. It has to be seen that though the said Explanation puts forward a deeming provision that non-excisable goods cleared by payment of consideration are also to be considered as exempted goods, there is no corresponding amendment made in sub-rule (1) of Rule 6 so that the goods that emerged out of process of manufacture falling in clause (1) are also to be considered as exempted goods. As per settled decisions, the goods which are not consciously manufactured by the appellants and which emerged in the process of manufacture cannot be considered as goods manufactured by the appellants. Thus, when the zinc scrap which is a waste arising out of process of manufacture of finished goods, is not goods manufactured by the appellant, the same cannot be considered as exempted goods manufactured by them. The Tribunal in the case of M/s.Bajaj Hindustan Sugar Ltd. vide Final Order stated supra had occasion to consider the very same issue and held as under :

"4. After hearing both the sides duly represented by learned AR, Shri Mohammad Altaf appearing for the Revenue and learned advocate Ms. Stuti Saggi on behalf of the respondent, we find that the issues are no more res integra. The Revenue's only grievance is that the precedent decision followed by the Commissioner (Appeals) would not apply after amendment in the provisions of sub-rule (1) of Rules 6 of Cenvat Credit Rules adding an explanation therein w.e.f. 01 March, 2015. We find that the said grounds of the Revenue was dealt with by the Tribunal in the case of Commissioner of Central Excise & Service Tax, Meerut-I V/s M/s Bajaj Hindusthan Sugar Ltd. vide Final Order

No.70916/2019 dated 01 May, 2019 it was observed as under:-

"3. I have heard the learned Departmental Representative on behalf of the Revenue. The respondents were manufacturers of sugar and molasses. They were removing Bagasse and Press Mud. The period covered is from 1st March 2015 to 31st March 2016. In view of the amendment in explanation under sub-rule (1) of Rule 6 of Cenvat Credit Rules, 2004 w.e.f. 01.03.2015 there was an obligation on the part of the manufacturer to pay amount under sub-rule 3 of said Rule 6 at a fixed percentage of the value of non-excisable goods removed when Cenvat Credit on input and input services were availed and such inputs and input services were used in the manufacture of excisable as well as exempted goods including non-excisable goods. Therefore proceedings were initiated against the respondent for recovery of around Rs.44.00 Lakhs. On perusal of record I note that the issue is covered by precedent decision in respondent's own case in respect of their another unit through Final Order No.70801/2019 dated 18.04.2019. It was held in the said Final Order that Press Mud and Bagasse are not arising out of manufacturing activity and the same are agricultural waste and residue and therefore since the said Final Order is applicable in the present case I uphold the impugned order and reject the appeal filed by Revenue."

Similar decision has been taken in the other final orders relied upon by the Ld. counsel for the appellant. Respectfully following the decision of the Division Bench of the Tribunal, I am of the view that that the demand cannot sustain. The impugned orders are set aside. Appeal is allowed with consequential relief, if any, as per law."

6. In another decision of Appellant's sister concern, on identical issue, a co-ordinate Bench (Allahabad Bench) of the Tribunal in the matter of *M/s. Apollo Metalex Pvt. Ltd. vs. Commr. of Central Tax, Noida; Final Order No. 71521/2019, dated 9.8.2019* while relying upon the aforesaid decision of the

Chennai Bench, allowed the Appeal filed by the Appellant's sister concern therein. The relevant paragraphs of this decision are also reproduced hereunder:-

"2. As per facts on record, the appellant is engaged in the manufacture of tubes during the manufacture of which unusable waste/residue is generated in the nature of flux skimming/zinc dross etc. the said waste is being sold by the assessee.

3. Revenue by entertaining a view that inasmuch as the appellant has availed Cenvat credit of duty paid on the common Cenvatable inputs used in the manufacture of excisable goods as also in the manufacture of said dross/skimming, they are required to pay 10% of the value of the said waste material in terms of the provisions of Rule 6(3) of Cenvat Credit Rules. It is the Revenue's case that as per the amendment carried in the said Rule with effect from 01/03/2015, the non-excisable goods have to be treated as exempted goods and as such the appellant was required to pay a particular percentage of the value of the zinc scrap.

4. I find that the issue stands decided by the earlier decision of the Tribunal. Particular reference can be made to the Tribunal decision in the case of M/s APL Apollo Tubes Ltd. Final Order No.40925/2019 dated 12/07/2019 vide which an identical situation was considered by the Tribunal and the dispute was resolved in favour of the assessee.

xxx

xxx

xxx

5. Inasmuch as the issue stands decided, I set aside the impugned order and allow the appeal with consequential relief to the appellant."

7. In yet another case while relying upon the same decision of Chennai Bench, similar view has been taken by the Bangalore Bench of the Tribunal that too in Appellant's own case in the

matter of *Lakshmi Metal Udyog Ltd. vs. Commr of Central Tax, Bangaluru South; Final Order No. 20621/2019, dated 6.8.2019.* The concluding paragraph of this decision also extracted as under:-

"6.1. Further, I find that other decisions relied upon by the appellant cited supra also deciding the issue in favour of the assessee by holding that Rule 6 of the CCR, 2004 is not applicable to the waste products which arises during the process of manufacture and is sold for some consideration. Further, I find that in the present case, the appellant is not the manufacturer of zinc waste/dross which comes into existence during the manufacture of Galvanized Steel Pipes/Tubes. Further, I find that the ratio in the case of APL Apollo Tubes Ltd. is squarely applicable in the present case and therefore, by following the ratio of the said decisions, I am of the considered view that the impugned order is not sustainable in law therefore I set aside the same by allowing the appeal of the appellant."

8. In view of the series of decisions of different Benches of the Tribunal deciding the issue in favour of the assessee, even after considering the amendment made in Rule 6 *ibid*, I am inclined to set aside the impugned order and the same is accordingly set aside. The appeals filed by the Appellant are accordingly allowed with consequential relief, if any, as per law.

(Pronounced in open Court on 18.11.2022)

(Ajay Sharma)
Member (Judicial)