

(2023) 12 CESTAT CK 0004

Customs, Excise And Service Tax Appellate, Mumbai

Case No: Excise Appeal No. 89946, 89947 Of 2014

M/S. Shilpa Steel & Power Ltd

APPELLANT

Vs

Commissioner of Central Excise,
Nagpur

RESPONDENT

Date of Decision: Dec. 4, 2023

Acts Referred:

- Central Excise Valuation Rules, 2000 - Rule 10A, 10A(i/ii)
- Cenvat Credit Rules, 2004 - Rule, 4(5)(a)

Hon'ble Judges: Dr. Suvendu Kumar Pati, Member (J); Anil G. Shakkarwar, Member (T)

Bench: Division Bench

Advocate: Saurabh Bhise, P.K. Acharya

Final Decision: Allowed

Judgement

Dr. Suvendu Kumar Pati, Member (J)

1. Inclusion of value of scrap, cleared on payment of duty, in the assessable value determined on the basis of sale price of the manufacturer and confirmation of demand with inclusion of scrap value on the job worker alongwith interest and penalty by the Adjudicating Authority that got confirmed in the order passed by the Commissioner (Appeals), as referred above, is assailed in this appeal.

2. Facts of the case, in a nutshell, is that Appellant is a manufacturer of rolled products of Iron & Steel and it also had undertaken job work of the same for other manufacturers/suppliers on receipt of inputs free of cost from them. The disputed period relates to manufacture of rolled products on job work basis by the Appellant for Steel Authority of India Limited (SAIL). On received of raw material from SAIL, Appellant had manufactured rolled products and cleared the same either to the depot of SAIL or to the Customer of SAIL. The Assessable value was determined on the basis of sale price adopted by SAIL and the same was claimed to be in accordance with Rule 10A of the Central Excise Valuation Rules, 2000. During the process of manufacturing, certain waste and scrap of Iron & Steel were generated which were cleared as scarp on payment of applicable duty on them. Claim of the Respondent-Department is that Appellant had retained the scrap in respect of job work done for SAIL, for which sale proceeds of the same, being as additional consideration, should have been included in the value of rolled products. Accordingly, demand was raised through show-cause notice, matter was adjudicated upon, demand with consequential penalty and interest got confirmed in the adjudication order and Appellant's unsuccessful attempt before the Commissioner (Appeals) has brought the dispute to the present forum.

3. During the course of hearing of the appeals, learned Counsel for the Appellant Mr. Saurabh Bhise submitted that issue has been settled at rest by this Tribunal in the Appellant's own case for the prior period from April, 2007 to December, 2010 which has been reported in 2014 (307) ELT 915 (T). Also in the Final Order No. A/85854/2023 dated 03.04.2023 covering another period namely April, 2004 to March, 2007, in which basing on the decision of this Tribunal and decision of the Hon'ble Supreme Court passed in the case of R.R. Rolling Mills Ltd. Vs. CCE as reported in 2010 (260) ELT A84 (S.C.) demand has been set aside and in the other appeal, the period of dispute relates to January, 2011 to October, 2012, during which period, Rule 10A of the Central Excise Valuation Rules, 2000 has already been brought into the statute book. He further submitted that since the Appellant had discharged duty on the value at which the principle manufacturer SAIL had sold its product to the customers, the issue is squarely covered by the judgment of Scrutech Tubes (I) Ltd. Vs. CCE, Pune-II as reported in 2017-TIOL-3859-CESTAT-MUM besides the fact that demand would otherwise not be sustainable in view of Rule, 4(5)(a) of the CENVAT Credit Rules, 2004 had input supplier followed the alternate procedure of sending inputs under Rule 4(5)(a) and Appellant job worker returning the manufactured product without payment of duty and, therefore, the order passed by the Commissioner (Appeals) is unsustainable both in law and facts.

4. In response to such submissions, learned Authorised Representative for the Respondent-Department Mr. P.K. Acharya argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and has drawn our attention to the impugned order stating that placing reliance on the decision of Jay Engineering Works Ltd. Vs. Commissioner of Central Excise, Hyderabad reported in 1996 (12) TMI 206 – CEGAT, MADRAS, General Engineering Works Vs. Commissioner of Central Excise, Jaipur reported in 2005-TIOL-187-SC-CX and Commissioner of Central Excise, Nagpur Vs. Lloyds Steels Inds. Ltd. reported in 200 (3) TMI 17 – Supreme Court, the Commissioner (Appeals) had passed the order for which interference by the Tribunal in the order so passed is uncalled for.

5. Learned Counsel for the Appellant contradicts the submission made by the learned Authorised Representative in pointing out that those decisions were rendered prior to introduction of Rule 10A(i/ii) which was brought into force w.e.f. 01.04.2007 and in the Lloyds Steels Inds. Ltd. judgment the implications of Rule 4(5)(a) of the CENVAT Credit Rules, 2004 has not been taken into consideration which was in fact done in R.R. Rolling Mills Ltd. taking into consideration the judgment of General Engineering Works and holding that value of scrap need not be includable in terms of alternate procedure of Rule 4(5)(a) that got final affirmation by the Hon'ble Supreme Court.

6. We have gone through the case record and took note of the submissions. We must bring it on record that plethora of decision being passed after the judgment of R.R. Rolling Mills Ltd. in which consistent findings was that value of scrap need not be included in the assessable value and Appellant had rightly placed the following judgments namely SRF Limited Vs. CCE reported in 2007 (220) ELT 201 (T) Affirmed by Supreme Court at 2016 (331) ELT A138 (SC), Ghatge Patil Industries Vs. CCE reported in 2015 (320) ELT 646 (T), Automotive Stampings and Assemblies Vs. CCE reported in 2019 (5) TMI 1169-CESTAT MUMBAI, Ad-manum Packaging Vs. CCE reported in 2016 (341) ELT 348 (T), CCE Vs. Reelamation Welding Limited reported in 2014 (308) ELT 542 (T), CCE Vs. Raja Magnetic Limited reported in 2017-TIOL-1420-CESTAT-BANG, Standard Drums and Barrels Vs. CCE vide Final Order Nos. A/86853-86854/2018 dated 28.06.2018, Sigma Punch Vs. CCE reported in 2018-TIOL-1347-CESTAT-BANG, CCE Vs. Rane Brakes Lining reported in 2018-TIOL-1058-CESTAT-MAD, Ghatge Patil Vs. CCE reported in 2014-TIOL-1760-CESTAT-MUM, to support his stand apart from the fact that in the Appellant's own case, for two other periods pre and post 2007, demand against

the Appellant has been set aside for the reason that value of scrap need not be included in the assessable value. In furtherance of the consistency and predictability of the judgment passed by this Tribunal and in obedience to the judicial precedent set by the Hon'ble Supreme Court and by this Tribunal, the following order is passed.

THE ORDER

6. The appeals are allowed and the order passed by the Commissioner of Customs, Excise & Service Tax (Appeals), Nagpur vide Order-in-Appeal No. NGP/EXCUS/000/APPL/082-083/14-15 dated 21.08.2014 is hereby set aside with consequential relief, if any.