

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Excise Appeal No. 1975 of 2012

(Arising out of Order-in-Appeal No. BR/98/2012 dated 13.09.2012
passed by the Commissioner (Appeals) IV, Central Excise, Mumbai
Zone I

JSW Steel Ltd.

**B-6, Tarapur, MIDC Boisar,
Thane**

.....Appellant

VERSUS

Commissioner of Central Excise, Thane IIRespondent

**3rd Floor, Navprabhat Chambers,
Ranade Road, Dadar (West)
Mumbai**

APPEARANCE:

Ms. Mansi Patil, Advocate & Mr. Viraj, Advocate for the
appellant
Shri Xavier Mascarenhas, Supdt (AR) for the respondent

CORAM:

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

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER No: A/86086/2023

DATE OF HEARING : 23.01.2023

DATE OF DECISION : 11.07.2023

Per: AJAY SHARMA

This appeal is arising out of the impugned order dated
13.09.2012 passed by the Commissioner (Appeals)-IV, Central
Excise, Mumbai Zone-I rejecting the appeal filed by the appellant
and upholding the order of the Adjudicating Authority.

2. The issue involved herein is whether additional consideration received by the appellants in the form of credit notes from M/s. Indrox Global Pvt. Ltd. (hereinafter referred to as "IGPL") for sale of *Ferric Oxide* by IGPL, which emerged through chemical reaction of *Waste Pickle Liquor*, (*generated during the course of manufacture of finished goods in the factory of the appellants*) admittedly supplied by the appellants to the said IGPL, is required to be added to the transaction value as per Rule 6 of Excise Valuation Rules, 2000?

3. The relevant facts leading to the filing of instant Appeal are stated in brief as follows. The appellants are engaged in manufacture of Steel articles. To remove impurity and rust 'pickling process' is carried out which resulted in generation of *Waste Pickle Liquor* ("WPL" in short). The appellant entered into agreement with M/s. Indrox Global Pvt. Ltd. (hereinafter referred to as "IGPL") who are into the business of recovery of chemicals, etc. out of waste material, for re-generation of hydrochloric acid from the said WPL. The appellants supplied the WPL to IGPL on payment of the amount of Re.1/- per M.T. The said IGPL in turn through its chemical reactor plants generated Hydrochloric Acid (HCL) and Ferric Oxide out of the said WPL and supplied the HCL back to the appellant after payment of price as per the agreement. So far as another product *Ferric Oxide* is concerned, IGPL sells it and 50% of the proceeds thereof are retained by them and whereas the remaining 50% are to be paid to the appellant by issuing credit notes to them. According to the

department during the course of investigation it was found that during the period July, 2004 to March, 2008 IGPL have issued various credit notes amounting to Rs.44,11,132/- to the appellant and the same is additional consideration received in terms of Rule 6 of Valuation Rules, 2000, which has to be included in the transaction value and accordingly a show cause cum demand notice dated 29.5.2009 was issued to the appellant, after invoking extended period, demanding differential Central Excise duty amounting to Rs.7,02,413/- alongwith Education Cess (EC) of Rs.14,048/- & Rs.3,332/- Higher Education Cess (HEC) with interest of Rs.1,20,750/- and penalty and also for appropriation of the duty amounting to Rs.7,02,413/- alongwith EC & HEC and interest paid by the appellant on 12.8.2008 during the course of investigation and the same was culminated into the Adjudication Order i.e. Order-in-Original dated 29.1.2010 by which the demands raised in the show cause notice were confirmed alongwith interest and penalty and appropriation of amount deposited during investigation was also confirmed.

4. Learned counsel for the appellants submit that during the course of manufacture of the finished products i.e. Galvanised Steel pipes, to remove impurity and rust accumulated on the raw material, the process of pickling is carried out on the raw material i.e. steel with Hydrochloric Acid to remove the impurities and due to which WPL emerged which cannot be reused for the said process and to remove impurities from the

said WPL it is necessary to process it and convert it into *regenerated acid* i.e. Hydrochloric Acid of lesser strength. For the said purpose the appellant sent WPL to IGPL and after chemical reaction therein two products emerged i.e. Hydrochloric Acid of lesser strength and Ferric/Iron Oxide. IGPL returns Regenerated Acid to the appellants and sells the Ferric/Iron Oxide, paid duty on it and shared the 50% of the sale proceeds with the appellants through credit notes. According to learned counsel, WPL is not dutiable being waste product as it does not satisfy the twin conditions of manufacture and marketable. Learned counsel further submits that the sale value of by-product arisen in the plant of IGPL cannot be said to be consideration for WPL sent to IGPL as the product has to be assessed in the same form in which it was cleared. Per contra learned Authorised Representative placed reliance on the decision of the Tribunal in the matter of *M/s. Rajasthan Prime Steel Processing Centre Pvt. Ltd. vs. CCE & CGST; 2021-TIOL-714-CESTAT-DEL* in support of his submission that the additional consideration received by the appellants from IGPL has to be included in the transaction value and reiterated the findings recorded in the impugned order.

5. We have heard learned Counsel for the appellants and learned Authorised Representative for the Revenue and perused the case records including the submissions and case laws placed on record. For ease of reference Rule 6 *ibid* is reproduced hereunder:-

“Rule 6. *Where the excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of Section 4 of the Act except the circumstances where the price is not the sole consideration for sale, the value of such goods shall be deemed to be the aggregate of such transaction value and the amount of money value of any additional consideration flowing directly from the buyer to the assessee.”*

Section 2(d) of the Central Excise Act, 1944 is as under:-

“2(d). “excisable goods” *means goods specified in the Fourth Schedule as being subject to a duty of excise and includes salt;*

Explanation.- *For the purpose of this clause, “goods” includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.”*

6. In our view the decision relied upon by the learned Authorised Representative in the matter of *M/s. Rajasthan Prime Steel Processing Centre Pvt. Ltd. vs. CCE & CGST; 2021-TIOL-714-CESTAT-DEL* is not applicable on the facts of the present case as in that case the assessee/appellant entered into contract with Honda India for supply of auto parts used in manufacture of motor vehicles and for that purpose the appellant had imported raw material and in some emergent situation they also air lifted the raw material which resulted in extra cost to the appellant but later on Honda India cancelled the purchase order, as a result the auto parts which were manufactured for delivery to Honda India, were sold by the appellant therein as scrap. So that value

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."

8. It is settled position that receipt of sale proceeds of the by-product i.e. Ferric/ Iron Oxide emerged as a result of chemical reaction of a waste product WPL in IGPL's reactor cannot be said to be the consideration for WPL as the product has to be assessed in the form in which it is cleared. WPL is nothing but waste which emerges in the process of manufacture

of steel articles or finished goods. It's not an end product or finished product and merely because it fetches some price in the market does not bring it out from the category of *waste*. It has neither any marketability nor saleability and therefore it's not liable to any duty. Waste or rubbish, which is thrown up in the course of manufacture, cannot be said to be a produce of manufacture and cannot be said to be exigible to excise duty. Another thing the appellant is not at all involved in converting of Ferric/Iron Oxide out of the said WPL and resultantly no demand can sustain against the appellant on that count also.

9. In view of the discussions made hereinabove, the impugned order is set aside and the appeal filed by the appellant is allowed with consequential relief, if any.

(Pronounced in open Court on 11.07.2023)

(Anil G. Shakkarwar)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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