

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH – COURT NO. 3**

**Excise Appeal No. 50075 of 2020**

(Arising out of Order-in-Appeal No. 273(CRMCE/JPR/2019 dated 03.10.2019 passed by the Commissioner, Central Excise & CGST (Appeals), Jaipur)

**The Commissioner, Central Excise  
& CGST, Alwar**

**Appellant**

VERSUS

**M/s R.P. Industries**

**Respondent**

Plot No. B-81(B), RIICO Industrial Area,  
Ondela Road Growth Centre,  
Dholpur (Rajasthan)

**Appearance**

Shri Sanjay Kumar Singh, Authorized Representative – for the Appellant.

Shri Manoj Makkar & Shri Arvind Birla, Advocates – for the Respondent.

**CORAM : HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)  
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**

**DATE OF HEARING/DECISION : 01/02/2023**

**Final Order No. 50103/2023**

**P.V. Subba Rao**

Revenue has filed this appeal to assail the Order in Appeal<sup>1</sup> dated 14. 10.2019 passed by the Commissioner (Appeals) Central Excise and CGST, Jaipur whereby he allowed the assessee's appeal and set aside the order in original dated 22.5.2019 passed by the Additional Commissioner.

2. The respondent manufactures lead ingots/lead rods and is registered with the Central Excise department and has been paying

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**1** impugned order

central excise duty. One of the raw materials used by the respondent is the lead scrap which is not duty paid and no CENVAT credit was availed on it. This scrap needs cleaning to separate non-lead elements such as plastics before it can be molten to manufacture lead ingots/lead rods. The respondent sold the plastic scrap so removed.

3. During audit of the respondent by the department, it was felt that duty should be paid on the plastic scrap so separated and sold by the respondent because it had arisen during the process of manufacture of the final products, viz., lead ingots or lead rods. It was observed that section 2(f) of the Central Excise Act, 1944<sup>2</sup> defines manufacture as follows:

2(f) "manufacture" includes any process, -

- (i) incidental or ancillary to the completion of a manufactured product;
- (ii) which is specified in relation to any goods in the Section or Chapter notes of the Fourth Schedule as amounting to manufacture; or
- (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;

4. Since the definition of manufacture is inclusive and includes any process incidental or ancillary to manufacture and the separation of plastic from the lead scrap is incidental to the manufacture of the final product, the plastic scrap which emerges in the process must be treated as having been manufactured and

must be charged to appropriate rate of central excise duty as there is no specific exemption notification for such scrap.

5. It was also felt that CBEC's circular No. 1029/17/2016-CX dated 10.5.2016<sup>3</sup> squarely applies to this case. Therefore, a Show Cause Notice<sup>4</sup> dated 7.12.2019 was issued to the respondent proposing recovery of duty of Rs. 1,16,17,931 under section 11A(4) along with interest under section 11AA and proposing to impose penalty under section 11AC.

6. These proposals in the SCN were confirmed by the Additional Commissioner in his Order in Original. On appeal, the Commissioner (Appeals) passed the impugned order setting aside the order in original. He observed that the respondent was purchasing non-dutiable scrap lots from various auctions and was segregating them and extracting various types of scrap through a manual process and this process does not satisfy the definition of manufacture under section 2(f) of the Act and therefore, no duty is liable to be paid. He also found that the CBEC's circular dated 10.5.2016 does not apply to this case.

7. Revenue filed this appeal assailing the impugned order on the following grounds:

- a) As per section 3 of the Act, duty has to be paid on all goods which are produced or manufactured in India. Section 2(f) defines manufacture and this process includes processes which are incidental or ancillary to manufacture.

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**3** Circular  
**4** SCN dated

- b) Exemption notification No. 27/2011-CE dated 24.3.2011 exempts certain waste, parings and scraps which arise during the course of manufacture but the goods in question are not covered by this exemption.
- c) As per CBEC's circular date 10.5.2016, where the scrap is separated and removed, it cannot be treated as removal of goods as such and duty as applicable has to be paid.

8. Learned authorized representative for the Revenue reiterated the above grounds and vehemently prayed that the appeal may be allowed.

9. Learned counsel for the respondent submits that the impugned order is correct and proper and calls for no interference. Firstly, he submitted that no CENVAT credit was availed on the scrap as it was not duty paid. From this scrap, the respondent removed plastic and other material and respondent used the lead scrap to manufacture ingots. The plastic waste is sold by the respondent but it was never manufactured as it emerged during the manual segregation of the scrap. He further submits that the CBEC's circular does not apply to this case as it was issued in a different context.

10. We have considered the submissions made and perused the records. The facts are not in dispute. The respondent manufactures lead ingots/lead rods and for this purpose uses lead scrap obtained from the market on which no duty is paid and the appellant also does not avail any CENVAT credit on the scrap. However, to use the scrap, plastic and other material must be separated and this is done manually and only the lead scrap goes into manufacture and

the other scrap (of plastic, etc.) is sold by the respondent. Revenue wants to charge excise duty on this other scrap on the ground that it arises during the process of segregation of the scrap which process is ancillary to the manufacture of goods and therefore, qualifies as manufacture itself.

11. On the other hand, according to the respondent, manufacture begins after the scrap is segregated manually. This manual segregation of scrap is neither manufacture by itself nor can it be called a process ancillary to manufacture. Since there is no process of manufacture, no central excise duty can be charged. The submission of the respondent deserves to be accepted. We do not agree with the revenue that segregation of scrap to remove the unwanted components from the lead scrap is a process of manufacture. It is only a process of segregation of raw materials; manufacture begins thereafter. Therefore, no duty can be charged on the plastic and other scrap segregated from the input scrap.

12. CBEC's circular dated 10.05.2016 does not carry the case of Revenue any further. This circular dealt with two questions. First, where a mixed scrap is fed into the foundry and some components of the scrap with higher melting points such as iron, steel, slag, etc. get separated as foundry waste it has been clarified to be a process waste as it arises out of the process. Second, where CENVAT credit availed scrap is segregated before feeding into the plant, the circular clarified that the removed unwanted scrap cannot be treated as removal of inputs as such under Rule 3(5) of the CENVAT Credit Rules, 2004 and therefore, there is no need to reverse the credit.

13. The circular further states that *'the segregated foreign material in such situation, as has been explained above, shall be cleared on payment of Central Excise duty on transaction value as per its appropriate classification and rate of duty determined on merits.'* In the present case, no CENVAT credit was availed at all on the input scrap. If duty has to be determined on merits, it needs to be first of all examined if the charging section of the Act applies. Section 3 levies duties of excise on "excisable goods produced or manufactured" in India. In the factual matrix of this case, the respondent is neither manufacturing nor is it producing the plastic scrap. The plastic scrap already exists and the respondent is only separating it manually from the rest of the scrap. Therefore, even if this circular is considered, no central excise duty can be charged.

14. We, therefore, find that the impugned order is correct and calls for no interference. The impugned order is upheld and Revenue's appeal is dismissed.

(Order dictated and pronounced in open court)

**(P. V. Subba Rao)**  
**Member(Technical)**

**(Binu Tamta)**  
**Member(Judicial)**

**RM**