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HIGH COURT OF CHHATTISGARH, BILASPUR

TAX CASE No. 1 of 2017

Commissioner, Central Excise & Customs Raipur, Chhattisgarh

---- Appellant

Versus

Jayaswal Neco Industries Limited Siltara Industrial Growth Centre, Phase-I, Siltara, Raipur, Chhattisgarh

---- Respondent

For Appellant	:	Shri Vinay Pandey, Advocate
For Respondent	:	Shri H.S. Patel, Shri Badrinarayan and Shri Yogendra Aldak, Advocates

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Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Judgment On Board

Per Thottathil B. Radhakrishnan, Chief Justice

10/07/2017

1. This appeal under Section 35 G of the Central Excise Act, 1944 is by the Revenue. Under challenge is a decision of the Customs, Excise & Service Tax Appellate Tribunal Principal Bench, New Delhi allowing the appeal of the respondent on an issue referable to the exigibility or otherwise of coke fines, which is admittedly a waste product which is generated as a result of manufacturing process carried by the respondent through its establishment.

2. We have heard the learned counsel for the Revenue and the learned counsel for the respondent.

3. The following question of law is framed in this appeal at the stage of

admission :-

> *“Whether the CESTAT was correct in allowing the Respondent's Appeal vide impugned Final Order No. A/52094/2016-EX[DB] dated 08.06.2016 and thereby rejecting the proposed demand and recovery of the amount raised by the Appellant under Rule 6(3)(i) of the CENVAT Credit Rules, 2004 despite the fact that Respondent had taken CENVAT credit on common input services/inputs and not fulfilled the condition of Rule 6(2) of the CENVAT Credit Rules, 2004 by not maintaining the separate accounts for inputs and input services used in the manufacture of exempted goods viz. Coke Fines ?”*

4. The learned counsel for the Revenue, in support of the question of law framed at the stage of admission, argued that having regard to the clear terms of Rule 6(2) and Rule 6(3)(b) of the CENVAT Credit Rules, 2004, the decision of the Tribunal is erroneous inasmuch as it proceeds to put coke fines element among the outputs of the manufacturing process of the respondent, as a waste product.

5. Per contra, the learned counsel for the respondent reiterating the reasoning of the Tribunal, also referred pointedly to the decision of the Apex Court in ***Union of India vs. Hindustan Zinc Ltd., 2014 (303) ELT 321 (SC)*** relied on by the learned Tribunal. He also made reference to the different statutory provisions including those contained in CENVAT Credit Rules which have bearing on issues arising for decision.

6. Adverting to the decision of the Commissioner which was subjected to the appeal before the Tribunal, it can be seen that the manufacturing

process of the respondent is elaborately described therein. Nonetheless, the learned Commissioner had not at any point of time concluded that the coke fines themselves is a product intended by the manufacturer to be available as commodity for its commercial and trade dealings. In this context, the learned Tribunal can be taken to have adverted to and considered all the relevant facts and factors related to the case in hand. This is evident from the recital of the fact as contained in paragraph 2 of the Tribunal's order which reads as follows :-

> *"2. The appellant is a manufacturer of iron and steel products falling under chapter 72 in their integrated steel plant. The main terms manufactured are sponge iron, pig iron, billets and rolled products in different forms. For carrying on the manufacturing operations, they manufactured "coking coal" as an intermediate product which is used to heat up blast furnace in their factory. Since coke so manufactured comes into existence in bigger sizes, they put it through a coke cutter, to reduce the size to that which is suitable for use in the blast furnace. During this process, coke fines (Coke dust) gets generated which are cleared from the factory without payment of excise duty following exemption notification no. 4/2006-CE dated 01.03.2006."*

7. The learned Tribunal also noticed that coke fines are not the final product of the manufacturing process of the respondent and it could be treated only as byproduct, which is nothing but in the form of waste and so much so, the respondent is not liable to be visited with any liability on account of Rules 6(3)(b) of the CENVAT Credit Rules having regard to the law laid down in *Hindustan Zinc Ltd. (supra)*.

8. Adverting to the provisions contained in Rule 6(2) of the CENVAT Credit Rules and the concept of input and output as emerging out of the definition clause of those Rules, it is evident that the Tribunal had not misdirected itself in arriving at conclusion that coke fines are part of waste resulting out of the manufacturing process in the establishment of the respondent and cannot be subjected to levy or be required to be accounted in term of 6(2) or 6(3)(b) of CENVAT Credit Rules.
9. For the aforesaid reasons, we hold that, on the facts and in the circumstances of the case, the question of law framed in this appeal has to be answered against the Revenue. We do so. Resultantly this appeal fails.
10. In the result, this appeal is dismissed. No costs.

Sd/-	Sd/-
(Thottathil B. Radhakrishnan) Chief Justice	(Sharad Kumar Gupta) Judge

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