HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Central/excise Appeal No. 165/2018
CNR: RJHC020828762018 | URN: EXCIA / 248U / 2018

Shree Cement Ltd., Bangur Nagar, Andheri Deori, Beawar Distt-Ajmer, Rajasthan Through Its Jt. President (Commercial) Arvind Khicha, S/o Dr. Indermal Khicha Aged 54 Years R/o Bangur Nagar Beawar, Dist-Ajmer

----Appellant

Versus

Commissioner, (CGST) And Central Excise And Service Tax, Jaipur-Ii Ncr Building, Statue Circle, C-Scheme, Jaipur Rajasthan

----Respondent

For Appellant(s)	:	Mr. Kinshuk Jain, Standing Counsel (CBIC) Mr. Daksh Pareek Mr. Arjun Singh Mr. Keshav Parashar Mr. Parth Khandel Mr. Saurabh Jain.
For Respondent(s)	:	

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order(Oral)

Reportable
03/08/2026

Per: Arun Monga, J.

1. Appeal herein is under Section 35G of the Central Excise Act, 1944, assailing the Final Order dated 15.01.2018 passed by the learned Customs, Excise and Service Tax Appellate Tribunal(CESTAT), New Delhi in Excise Appeal No. 59090 of 2013, whereby excise duty was imposed on clearance of scrap generated from capital goods on which CENVAT credit was availed.

2. The brief facts giving rise to the present appeal are as follows. The appellant company is engaged in the manufacture of cement and

clinker, classifiable under Tariff Item Nos. 25232910 and 25231000 of the Central Excise Tariff Act, 1985.

2.1 During the period from April 2009 to March 2010, the appellant cleared scrap generated from various capital goods on which CENVAT credit had been availed. Such scrap comprised, inter alia, refractory bricks, miscellaneous capital goods scrap, conveyor belt scrap, ACCR and cable scrap, filter bags, and discarded plant and machinery items. In respect of scrap falling under specified tariff headings of the Central Excise Tariff Act, 1985, the appellant discharged central excise duty amounting to Rs. 2,56,270/- on the transaction value, in terms of Rule 3(5A) of the CENVAT Credit Rules, 2004. However, in respect of scrap for which, according to the appellant, no specific tariff entry was available, the goods were cleared under VAT invoices without payment of central excise duty, on the premise that such goods were non excisable.

2.2 A Show Cause Notice dated 19.04.2011 was issued to the appellant, proposing recovery of central excise duty of Rs. 6,33,256/- on the clearance of such scrap, together with applicable interest and penalty. The appellant submitted a reply dated 23.09.2011, contending that the goods in question were not covered under any tariff heading and were, therefore, non excisable and not liable to duty. The adjudicating authority, unpersuaded by this contention, confirmed the proposed demand of Rs. 6,33,256/- along with interest, and imposed an equivalent penalty, by Order in Original dated 24.05.2012.

2.3 Aggrieved thereby, the appellant preferred an appeal before the Commissioner (Appeals), who, by Order in Appeal dated 05.04.2013, upheld the findings of the adjudicating authority. The appellant thereafter carried the matter to the Customs, Excise and Service Tax

Appellate Tribunal, New Delhi. The Tribunal, by Final dated 15.01.2018, dismissed the appeal and affirmed the concurrent findings of the authorities below.

2.4 Hence, the present appeal.

3. Having heard learned counsel for the rival parties and having perused the record, certain facts emerge which are not in dispute. Concededly, the appellant is not a manufacturer of refractory bricks, conveyor belts, ACCR and cables, filter bags, or the other plant and machinery items in question. These items were procured and deployed as capital goods in the course of manufacture of cement and clinker, and CENVAT credit was duly availed thereon. Over a period of use, these capital goods were either rendered unusable or deteriorated on account of wear, rust, and efflux of time, and were thereafter sold by the appellant as scrap for a consideration.

4. The short question that arises for our consideration is whether waste and scrap of capital goods, on which CENVAT credit stood availed, is liable to central excise duty upon its clearance, notwithstanding the appellant's plea that such scrap is not covered under any specific tariff entry and does not emerge from any process of manufacture undertaken by the appellant.

5. The above question is required to be addressed in light of Rule 3(5A) of the CENVAT Rules, 2004 which reads as under:-

Rule 3(5A) of the CENVAT Rules, 2004

(5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely :-

(i) for computers and computer peripherals :

for each quarter in the first year @10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%

for each quarter in the fourth and fifth year @ 1%

(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter :

***Provided** that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.*

(b) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value."

6. Having perused the aforesaid provision, in our view, the said Rule embodies a self contained statutory obligation. It stipulates, in unambiguous terms, that where capital goods on which CENVAT credit has been taken are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on the transaction value of such waste and scrap. The rationale underlying the provision is evident. The credit mechanism is a concession granted to the manufacturer on the premise that the capital goods are put to use in, or in relation to, the manufacture of dutiable final products. When such credit availed capital goods exit the tax net in the form of scrap sold for value, the Rule ensures that an amount commensurate with the duty on such transaction value is remitted, so that the credit availed at the time of receipt is not converted into an unintended windfall.

7. Viewed thus, the appellant's contention that the scrap is non excisable for want of a specific tariff entry, or because it does not result from any process of manufacture, does not seem tenable. The charge in such cases is not predicated upon the scrap being a manufactured product of the appellant. It is predicated upon the statutory condition attached to the availment of credit itself. The appellant, having availed the benefit of CENVAT credit on the capital goods, cannot resile from the corresponding obligation cast by Rule 3(5A) at the time of clearance of those very goods as waste and scrap. To hold otherwise would permit

an assessee to enjoy the credit on capital goods and yet clear their remnants for consideration without any fiscal consequence.

8. In fact, a similar question arose for consideration before the Gujarat High Court. The questions proposed there was whether excise duty is leviable on the sale of old and unusable modvated capital goods sold as waste and scrap under Rule 57-S(2)(C) of the Central Excise Rules, 1944, and whether the scrap of machinery sold by the assessee is excisable at all.

9. The Gujarat High Court repelled the assessee's contention that waste and scrap can be subjected to duty only when it is generated in the process of manufacture. Relevant of the Gujarat High Court decision dated 06.02.2006 in **Tax Appeal No. 1691/2005**[1], titled as ***GNFC Limited versus Union of India*** is extracted as below:-

> *"2. The appellant has proposed the following two questions stated to arise out of impugned order of Tribunal dated 12-7-2005.*
>
> > *"(1) Whether duty of excise is leviable on sale of old and unusable modvated capital goods, sold as waste and scraps, under the provisions of Rule 57-S(2)(c) of the Central Excise Rules, 1944?*
> >
> > *(2) Whether scrap of machineries sold by the appellant is excisable?"*
>
> *3. Heard Mr. Saxena for M/s. Trivedi & Gupta, learned advocates for the appellants. The principal contention is that, any waste and scrap for being liable to duty should be products resulting as products of the process of manufacture. That in the case of the appellant, the capital goods were used for the purposes of the business of the petitioner, namely, for manufacture of the fertilizers and what is sold is the scrap of such capital goods after the capital goods have been used for the purposes of business. According to him, therefore, in light of the provisions of Section 3 of Central Excise Act, 1944, Rule 57 - S(2)(c) of the Central Excise Rules, 1944 (as was applicable at the relevant time) cannot be applied to the facts of the case.*
>
> *4. The Tribunal has upheld the levy in light of Rule 57-S(2)(c) of the Rules.*
>
> *5. On a plain reading of the said Rule, it is clear that where capital goods are sold as waste and scrap, the manufacturer is bound to pay the duty leviable on such waste and scrap. Clause [c] of sub-rule (2) of Rule 57-S of the Rules has to be read in light of clauses (a) and (b), which precede clause [c]. It is apparent that the Rule does not deal with the capital goods as final products, but capital goods which are used for the purposes of manufacture. The contention on behalf of the appellant that waste and scrap can be amenable to duty only when it is generated in the process of manufacture, does not merit acceptance in light of the facts of the case,*

1 2007 (214) ELT18 (Guj.)

> *for the simple reason that the appellant is not a manufacturer of capital goods. In other words, the appellant does not manufacture and sell capital goods, but uses such capital goods for the purposes of process of manufacture.*
>
> *6. In these circumstances, in absence of any infirmiy in the impugned order of Tribunal, no substantial question of law arises and the appeal is dismissed."*

10. We may like to observe here that, although GNFC Limited (supra) was rendered in the context of Rule 57-S(2)(C) of the Central Excise Rules, 1944, the said provision is the legislative precursor of Rule 3(5A) of the CENVAT Credit Rules, 2004. Both provisions are *pari materia* in substance and object. The reasoning of the Gujarat High Court, with which we are in respectful agreement, thus applies with full force to the facts of the present case also.

11. It further transpires that the aforesaid view of the Gujarat High Court was assailed before the Hon'ble Supreme Court of India by way of SLP (C) No. 013195 of 2006, which came to be dismissed by order dated 04.08.2006. The view taken by the Gujarat High Court has, therefore, attained finality.

12. For the foregoing reasons, we find no infirmity in the impugned order of the Tribunal or in the concurrent findings recorded by the authorities below. It is held that where capital goods are sold as waste and scrap, the manufacturer is bound to pay the duty leviable on such waste and scrap. No substantial question of law otherwise arises for our consideration.

13. The appeal is, accordingly, dismissed. Pending applications, if any, shall also stand disposed of. No order as to costs.

14. All pending application stands disposed of.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

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