**Mukand Ltd. Vs. the Commissioner of Central**

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**SooperKanoon Citation** : sooperkanoon.com/35766

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Jun-28-2004

**Judge** : M T K.D.

**Appellant** : Mukand Ltd.

**Respondent** : The Commissioner of Central

**Judgement** :
1. The appellant's appeal is directed against the impugned order-in-appeal, whereby their request for refund of Rs. 5,29,299/- was rejected. The appellants are sending certain materials such as, bright bars, coils, rods etc. to the job workers for the process of grinding , pickling, heat treatment, polishing, peeling, etc. These bars are received back from the job workers. The appellants did not receive the scrap that was generated during the said processes undertaken at the job workers' premises. Accordingly, in terms of Rule 57F (5), they made the payment of duly on the scrap by adopting the value of the prime material instead of adopting the value applicable to scrap sale. On realising the mistake, that they had made excess debit of duty on the scrap, they worked out the actual duty payable by them on the value of scrap based on the market value of scrap and sought refund of the said amount, which was rejected by the Assistant Commissioner and also by the Commissioner (Appeals). Hence the instant appeal.

3. In this case, it is noted that, the appellants are sending a certain number of bars to the job workers and on receipt thereof, there is only shortage in weight of the individual bars and there is no shortage in the number of pieces which were

despatched to job workers from the appellant's factory. It is therefore clear that, there is a material loss. While some losses, such as burning loss or loss due to peeling, pickling, etc. could be of invisible type, the other processes such as, grinding would generate scrap in the form of dust, which cannot be conveniently collected for disposal in a tangible form. Nevertheless, the appellants admit that, whatever the shortages in the weight were noticed while receiving the material from the job worker's premises can be treated as non-receipt of scrap in a tangible form. Accordingly they have paid duty, on the said quantity though on higher value than applicable. Lower authorities have disputed the appellant's version and held that whatever shortage has been noticed refers to the shortage of prime material itself and, therefore, duty paid by the appellant was correct and there is no case of refund.

4. I have considered the rival submissions. It is obvious from the challans that have been produced on record that, there is no shortage in the number of pieces of bars, which are issued from the factory to the job workers. Therefore, the case of the department, that the prime material itself has been sold is not substantiated.

5. The only dispute that remains, is as to, what could be the price that has to be adopted for the purpose of duty payment on scrap, which did not come back to the appellant's factory. Whereas the appellants claim that they have based their calculations with reference to the market prices of the scrap prevailing on the date of duty payment, no data is available before this Tribunal, to make any assessment of this claim. It was also pleaded by the appellants that, they themselves are purchasing scrap and the value is based on such purchase price, though such incoming scrap is of superior quality compared to the scrap that is generated in the job workers premises, which is contaminated with chemicals, greases and other foreign material.

6. On considering the submissions above, I hold that, the adjudicating authority is required to arrive at the correct value of the scrap, keeping in view the data the appellants may submit to substantiate their claim regarding the appropriate value they propose to adopt.

Accordingly, the orders of the lower authorities are set aside and the matter is remanded to the adjudicating authority for denovo consideration. The adjudicating authority shall finalise the matter within twelve weeks from the date of this order after providing suitable opportunities to the appellants to place proper evidence in support of their claim after following the principles of natural justice.

7. The appeal is allowed by way of denovo remand to the adjudicating authority, and the orders of the lower authorities are consequentially set aside.