

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 42420 of 2013

(Arising out of Order-in Original No.07/CE/COMMR/2013 dated 23.08.2013 passed by Commissioner of Central Excise Central Revenue Building NGO-'A' Colony Tirunelveli – 627 007.)

M/s. Vedanta Ltd.,
SIPCOT Industrial Complex,
Madurai Bypass Road,
T. V, Puram P. O.
Tuticorin 628 002

: Appellant

VERSUS

**The Commissioner of Central Excise
& Customs,**
Central Revenue Building,
Tractor Street,
NGO-A Colony, Tirunelveli-627 007

: Respondent

APPEARANCE:

Shri Akshit Malhotra, Advocate for the Appellant

Shri M. Ambe, Deputy Commissioner/A.R. for the Respondent

CORAM:

**HON'BLE MRS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 40702/ 2023

DATE OF HEARING:02.08.2023

DATE OF DECISION:21.08.2023

Order : [Per Hon'ble Mrs. Sulekha Beevi C.S.]

Brief facts are that the appellant M/s. Vedanta (Formerly known as M/s. Sterilite Industries Ltd) are engaged in manufacture of copper anode, sulphuric acid,

anode slime, phosphoric acid etc. They are availing Cenvat Credit on inputs, input Services and capital goods.

2. During the period from February 2012 to March 2012, the appellant filed two rebate claims being the duty paid by them on the export of copper cathode, anode slime and selenium powder falling under chapter heading 74031100, 71129990 and 28049000 respectively. After due process the Assistant Commissioner, Tuticorin Division, sanctioned the entire rebate claim.

3. Out of the above products exported by the appellant, The rebate claim on anode slime falling under CH 71129990 amounted to Rs. 35,34,86,306/- It appeared to department that anode slime is unconditionally exempted in terms of Sl. No. 22 of the Notification No. 05/2006 dated 01.03.2006 (amended notification no..12/2012 dated 17.03.2012). The said notification exempts "waste and scrap of precious metal or metals clad with precious metals, arising in course of manufacture of goods falling under chapter 71" In view of the unconditional exemptions given to the processed anode slime, no duty is payable and the appellant could not claim rebate of duty. It thus appeared that the rebate of duty sanctioned in respect of export of anode slime is not legal and proper. Show Cause Notice dated 07.11.2012 was issued to appellant proposing to recover the erroneously granted rebate along with interest. After due process of law, the original authority vide order impugned herein confirmed the demand of Rs. 35,34,86,306/- along with interest holding that the rebate has been sanctioned erroneously. Aggrieved the appellant is now before the Tribunal.

3.1. The Ld. Counsel Shri Akshit Malhotra appeared and argued for the appellant. It is submitted by him that against the sanction of refund the department has filed revision before the government and the same is pending.

3.2. There were divergent views on the issue as to whether duty is payable on anode slime. The Chief Commissionerate of vododara held that it was dutiable whereas, the view taken by Chief Commissionerate of Coimbatore was that the benefit of notification is available to the product and hence exempted. The appellant had made a representation before the CBEC seeking clarification on the issue due to the recurring dispute in regard to rebate claims filed by the appellant. Thereafter the appellant moved the Hon'ble High Court of Madras, at Madurai Bench by filing a writ petition no. 5643/2015 seeking direction against CBEC for issue of clarification. The Hon'ble High Court vide order dated 15.04.2015 directed the CBEC to consider the representation made by appellant. The CBEC vide Circular No. 71/04/2012-CX-1 dated 14.07.2015 clarified that anode slime is dutiable product and is not eligible for the exemption of the notification. It is submitted by the appellant that the duty paid by appellant on exported anode slime is proper and therefore the demand confirmed by the adjudicating authority to recover the sanctioned rebate cannot be sustained and prayed that the same may be set aside.

4. The Ld. Counsel also submitted that for the earlier period (August 2011 to Jan 2011) the department had issued similar notice and upon the confirmation of demand by the original authority, the appellant had filed appeal no. E/40955/2013 and E/41312/2013 before the Tribunal. Taking note of the fact that the clarification from CBEC is awaited, the Tribunal vide Final Order No. 400059/2014 dated 28.01.2014 remanded the matter to the adjudicating authority. In denovo proceeding, the adjudicating authority vide order-in-original dated 28.03.2016, set aside the demand based on the clarification issued by Board. The Ld. Counsel prayed that the appeal may be allowed.

5. The Ld. Authorized Representative Shri Ambe appeared for the department. The Legal opinion given by

the Senior Special Counsel of the department was furnished. It is submitted that the Board's clarification has settled the issue.

6. Heard both sides.

7. From the facts narrated above, it can be seen that the Board vide Circular dated 14.07.2015 has clarified that duty is payable on anode slime. Being so, the rebate sanctioned in regard to anode slime exported is legal and proper. The demand confirmed by the adjudicating authority cannot sustain and requires to be set aside, which we hereby do.

7.1 The relevant part of Board Circular dated 14.07.2015 is reproduced as under:-

"21. (a) Anode slime, a byproduct of copper refining industry is not entitled to exemption under S. No. 195 of the Notification No. 12/2012-C.E., dated 17-03-2012.

(b) The issue under consideration is a mixed question of law and fact and has been considered and decided by the Commissioner, who is the adjudicating authority under Section 33 of Central Excise Act, 1944. As per Section 35B of Central Excise Act, 1944, against the adjudication Order, a statutory remedy of filing the Appeal is available to the party before the CESTAT. Further, against the Order passed by the Tribunal, an appellate remedy is available before the Division bench of the High Court on questions of Law. The present order does not substitute the due process prescribed in the Act. The view expressed on merits are in compliance of the Orders dated 15-04-2015 of the Hon'ble High Court. The adjudicating and appellate authorities may pass suitable orders in accordance with law".

7.2. The relevant part of the legal opinion furnished by the department reads as under:-

The question of exemption to Anode Slime arising out of manufacture of Copper cathode from Copper Anodes has

been a subject matter of litigation, particularly, because of difference of opinion between two Commissionerates. On a Writ Petition filed by the assesses before the High Court of Madras (Madurai bench), the High Court vide their order dated 26.07.2015 had directed the CBEC to decide the issue and clarify the matter.

Accordingly, the Board had since communicated their decision vide Board's letter F. No. 71/4/2012-CXI dated 14 07.2015, holding that the Anode slime arising in the course of manufacture of copper cathodes is not a precious metal and therefore not eligible for the exemption under St No. 195 of notification 12/2012-CE dated 17.03.2012. After giving a categorical finding on merits, the Board had also clarified that the authorities may take the final decision, wherever the matter is pending accordingly.

As per my understanding, the board's clarification had finally settled the issue in favour of the assesses. Further, I also understand that in similar matters, for different period against the same assessee, the demands of erroneous rebate had been settled in favour of the assessee and accepted by the department

8. In the result, the impugned order is set aside. The appeal is allowed with consequential relief, if any,

(Order pronounced in the open court on 21.08.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)