(2015) 07 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal Nos. 7614-7615 of 2005

Bajaj Auto Ltd.	APPELLANT
Vs	
Commissioner of C. Ex. & Cus., Aurangabad	RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Citation : (2015) 322 ELT 419 : (2015) 16 SCC 261

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri Pratap Venugopal, Ms. Surekha Raman, Purushottam Jha, Gaurav Nair, Ms. Niharika, Advocates and M/s. K.J. John and Co, for the Petitioner; S/Shri A.K. Panda, Senior Advocate, Rajiv Nanda, Ms. Sunita Rani Singh, Sanjiv Das and B. Krishna Prasad, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. The issue involved in these appeals is regarding the confirmation of duty on the aluminium dross and aluminium ash that arises during the manufacture of die-casting of aluminium parts. The appellants herein supplied aluminium ingots to job worker and the job worker manufactured the parts, by melting this aluminium and die-casting the same. This factual position is undisputed. During the course of such die-casting of items/parts of aluminium, ash and dross arises. It is the contention of the Revenue that such aluminium ash and dross are liable for payment of excise duty.

2. The aforesaid contention of the Revenue has been accepted by the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as ''CESTAT'') holding that the appellant No. 1 - assessee is liable to pay duty on the aluminium ash and dross as well.

3. It is submitted by the learned counsel for the appellants that the CESTAT has committed grave error in arriving at the aforesaid conclusion. He argues that in order to make a particular product excisable to duty twin conditions are to be

satisfied, viz., (1) that the product has come into existence by process which amounts to manufacture within the meaning of Section 2(f) of the Central Excise Act and (2) such product is marketable. In support of this, he has referred to the judgment of this Court in ''Union of India and Others v. Indian Aluminium Co. Ltd. and Another'' [1995 Supp (2) SCC 465 = 1995 (77) E.L.T. 268 (S.C.)]. He submits that aluminium ash and dross were by-products which came into being during the manufacture of die-casting of aluminium parts. He has also pointed out that the CESTAT itself accepted, while deciding the issue for the future period, that the aforesaid case of the appellant is covered by the judgment of this Court in Indian Aluminium Co. Ltd.''s case referred to above.

4. After hearing the counsel for the parties, we are of the opinion that the CESTAT''s later judgment in the appellant''s case itself, which is the decision dated 23-1-2008 rendered in Appeal No. E/3182/2001, etc., clinches the issue. The learned counsel is right that in the aforesaid decision, the CESTAT has held that during the manufacture of die-casting of aluminium parts, dross and ash emerge as by-products and, therefore, insofar as these by-products are concerned, no manufacturing process is involved and on that basis, it has held that no excise duty shall be payable thereupon. It is pertinent to mention that this decision has been accepted by the Revenue.

5. Accordingly, the impugned order of the CESTAT is set aside and the appeals are allowed.

6. No Costs.

