

REGISTERED SPEED POST AD



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 198/18/2014-RA

/2651

Date of Issue: 24.06.2022

ORDER NO. 638/2022-CX (SZ) /ASRA/MUMBAI DATED 24.6.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise, Tirunelveli

Respondent : M/s Sesa Sterlite Ltd.
SIPCOT Industrial Complex,
Madurai Bypass Road,
T. V. Puram,
Tuticorin - 628 008

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against OIA No. TNL-CEX-000-APP-264-13 dated 24.12.2013 passed by the Commissioner of Central Excise(Appeals), Madurai.

ORDER

The revision application has been filed by Commissioner of Central Excise, Tirunelveli(hereinafter referred to as "the applicant" of "the Department") against OIA No. TNL-CEX-000-APP-264-13 dated 24.12.2013 passed by the Commissioner of Central Excise(Appeals), Madurai in respect of M/s Sesa Sterlite Ltd., SIPCOT Industrial Complex, Madurai Bypass Road, T. V. Puram, Tuticorin – 628 008.

2.1 The respondent had filed rebate claim for duty amounting to Rs. 6,73,52,902/- paid on anode slime(CETH 7112.90) exported under ARE-1 No. 300277/27.04.2012 and ARE-1 No. 300278/27.04.2012 and rebate claim for duty amounting to Rs. 7,42,72,891/- paid on copper cathodes. After due process of law, the Assistant Commissioner of Central Excise, Tuticorin Division vide his OIO No. 45/2012(Rebate) dated 02.08.2012 rejected the claim relating to anode slime holding that it is unconditionally exempt from payment of duty in terms of Sr. No. 195 of Notification No. 12/2012-CE dated 17.03.2012.

2.2 Aggrieved by the OIO dated 02.08.2012, the respondent filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) held that the respondent was eligible for rebate of duty paid by them in respect of anode slime exported under ARE-1 No. 300277/27.04.2012 and ARE-1 No. 300278/27.04.2012. He therefore allowed the appeal filed by the respondent vide his OIA No. TNL-CEX-000-APP-264-13 dated 24.12.2013.

3. The Department found that the OIA No. TNL-CEX-000-APP-264-13 dated 24.12.2013 was not legal and proper for the following reasons :

(a) The respondent themselves have classified processed anode slime under ch.s.h. 71129990 and declared that it contains precious metals; viz. gold and silver as seen from the shipping bills filed by them.

(b) The series of processes that raw anode slime undergoes is in conformity with internationally accepted best manufacturing practices involving critical technologies for extraction of precious metals. Attention

was drawn to the various processes involved in the extraction of precious metals as evident from URL <http://www.outotech.com/en/Products--services/Non-ferrous-metals-processing/Precious-metals/>.

(c) In the present case, the goods in question are "processed anode slime" which has arisen after "raw anode slime" has undergone a series of processes for the ultimate purpose of extraction of precious metals. It was submitted that the learned appellate authority had failed to appreciate these facts.

(d) Once the processing of raw anode slime commences, the 'waste and scrap' arising at each stage during the process of extraction of various other products like copper, tellurium and selenium would be unconditionally exempt as each of these processes constitutes a set of processes which is ultimately designed and intended for the purpose of recovery of precious metals which are products falling under chapter 71. Hence, processed anode slime would qualify for exemption under Sr. No. 195 of Notification No. 12/2012-CE dated 17.03.2012.

(e) The various processes involved in the manufacture of precious metals from raw anode slime are recognized universally as can be seen from the relevant extract of "Recent Operation and Environmental Control in the Kennecott Smelter" by C. J. Newman, D. N. Collins and A. J. Weddick of Kennecott Utah Copper Corporation, Utah 84044-6001, USA appeared in the URL http://kennecott.com/library/media/kennecott_smelter.pdf.

(f) It was submitted that the incontrovertible facts are that i) raw anode slime undergoes a series of processes like leaching for removing copper remnants, filtering for separation of telluride, removal of heavy metal content and desalination for extraction of selenium; ii) processed anode slime has a commercial value and is exported. It was pointed out that the Commissioner(Appeals) had not disputed the fact that processed anode slime contains precious metals falling under chapter 71 which are capable of extraction. The respondent had not contended before the Commissioner(Appeals) that processed anode slime is incapable of extraction of goods falling under chapter 71. Hence, the processed anode slime is exempted under Notification No. 12/2012-CE dated 17.03.2012.

(g) The Commissioner(Appeals) had relied upon the letter dated 18.07.2012 of the Commissioner of Central Excise, Vapi and letter dated 11.10.2012 of the Chief Commissioner, Vadodara in the impugned order. It was submitted that the correspondence emanating and terminating within the various Offices of the Department cannot be the basis for argument before an adjudicating authority and that the dispute between an assessee and the Department should be settled through the mechanism as expressly recognized by laws in force and not through any other manner. It was averred that the original authority had passed an order after duly following the principles of natural justice and had the sanctity of law. The respondent had placed their defence before the original authority who had duly considered all their arguments and passed a reasoned order. Hence, the Commissioner(Appeals) reliance upon the letters of the Commissioner, Vapi and the Chief Commissioner, Vadodara was improper.

(h) Chapter Note 6 of Chapter 71 of HSN/Central Excise Tariff clearly states that any reference to 'precious metal' includes a reference to alloys of the precious metals as referred to in Chapter Note 5 of Chapter 71. As per Note 5, alloy includes sintered mixture and inter-metallic compounds. In view of these stipulations in notes to Chapter 71 in the Central Excise Tariff, it was not necessary for the notification to refer to both metals and precious metallic compounds as they were already covered in the chapter note. It was therefore important to understand the notification in a holistic way in keeping with the notes contained in Chapter 71. The Commissioner(Appeals) had failed to appreciate these facts in the impugned order.

(i) With regard to the observation of the Commissioner(Appeals) that the original authority had not specified as to where the goods of Chapter 71 have emerged in the above process, it was pointed out that the original authority had dealt with this issue in depth in para 16 of his order. Moreover, the respondent had admitted to the fact that processed anode slime contains precious metals. Hence, this finding recorded by the Commissioner(Appeals) is erroneous.

(j) Attention was drawn to the order in the case of Chief Set Housewares (India) Pvt. Ltd.[2012(283)ELT 307(GOI)] wherein it had been held that in terms of sub-section (1A) of Section 5A of the CEA, 1944, duty cannot be paid when goods are unconditionally exempt from the whole of the duty of excise and that such amount becomes a deposit with the Government. In this regard, reliance was placed upon the decisions in Flamingo Pharmaceuticals Ltd.[2012(283)ELT 466(GOI)] and Aravind Limited[2012(285)ELT 155(GOI)]. It was further submitted that Board Circular No. 940/1/2011-CX. dated 14.01.2011 had clarified that in view of the specific bar provided under sub-section (1A) of Section 5A of the CEA, 1944, the manufacturer cannot opt to pay the duty in respect of unconditionally fully exempted goods.

(k) It was further submitted that Article 265 of the Constitution of India decrees that "No tax shall be levied or collected except by authority of law". In their judgment in the case of State of Mysore vs. Cowasji and Co., the Hon'ble Supreme Court had held that "the tax in question must be authorized by such valid law". Likewise, in the case of New Delhi Municipal Committee vs. State of Punjab, the Apex Court held that 'Article 265 provides that not only levy but also the collection of a tax must be under the authority of some law'.

(l) The applicant further submitted that Section 5A(1) of the CEA, 1944 envisages no payment of duty on goods which are absolutely exempted and Notification No. 12/2012-CE dated 17.03.2012 had extended unconditional exemption to "anode slime" exported by the respondent and Rule 18 of the CER, 2002 visualises rebate of duty paid on excisable goods only. The respondent had contravened these provisions of law by paying duty on processed anode slime which was unconditionally exempt from payment of duty. Hence, the amount paid by the respondent cannot be treated as "duties of excise" for the purpose of Rule 18 of the CER, 2002 and since it is not 'duties of excise' within the meaning of Rule 18, no rebate can be sanctioned or paid to the assessee.

4.1 In response to the SCN dated 18.03.2014 issued under Section 35EE of the CEA, 1944, the respondent filed reply vide letter dated

09.08.2014. At the outset, the respondent stated that they had not by themselves classified raw anode slime under ch.s.h. 71129990. They submitted that they were classifying the product under ch.s.h. 26203090 and that they had classified the product at ch.s.h. 71129990 as instructed by the Department. They pointed out that it was relevant to note that heading 7112 applies to waste and scrap of precious metal or metal clad with precious metal, other waste and scrap containing precious metal or precious metal compound of a kind used principally for recovery of precious metals. It was stated that the exemption under Sr. No. 195 of Notification No. 12/2012-CE dated 17.03.2012 applies to waste and scrap of precious metal or metal clad with precious metal emerging in the course of manufacture of goods falling under Chapter 71 and does not apply to other precious metals or precious metal compounds of a kind used principally for recovery of precious metals. The respondent contended that the anode slime exported by them was not waste and scrap of precious metal or metal clad with precious metal but waste and scrap containing precious metal or precious metal compound used primarily for recovery of precious metal.

4.2 With regard to the Departments contention that the respondents themselves had declared that anode slime exported by them contained precious metals; viz. gold and silver, the respondents stated that the Department had failed to appreciate that the anode slime exported by them did not contain any gold and silver as such. The respondents stated that the product exported by them had in addition to metals such as nickel, lead bismuth , arsenic, antimony, barium, gold, silver and platinum group metals(PGM) mostly in compound form alongwith some other minor elements, some trace elements of precious metals in their compound form; viz. sulphide or oxide form alongwith minor amount of AgCl. They submitted that the reference to gold and silver in the shipping bills was only for arriving at the value of the said waste and scrap. It was stated that in trade, the value of anode slime was arrived at by considering the extent of gold and silver which can be extracted from the said compound after processing. It was further submitted that in arriving

at the value, deduction is made for the cost which would be incurred for processing the precious metal in their compound form. The respondent averred that the revision application had without taking cognizance of the relevant factual position, made certain presumptions which were clearly untenable and bad in law.

4.3 The respondent submitted that the Department had erred in contending that the processed anode slime emerges during the manufacture of goods falling under Chapter 71 as the entire process had been designed and undertaken for the sole purpose of extraction of precious metal. The respondent stated that even if it was assumed that the anode slime was classifiable under chapter 71, it would not be eligible for exemption as it does not arise in the course of manufacture of goods falling under chapter 71 but arises during the course of manufacture of copper cathode from copper anode which falls under chapter 74. This fact had been confirmed by Chief Commissioner, Vadodara in his letter F. No. IV/16-72/T/12/4404 dated 11.02.2012 addressed to CBEC. The respondent averred that the exemption in terms of Sr. No. 22 of Notification No. 5/2006-CE dated 01.03.2006 and Sr. No. 195 of Notification No. 12/2012-CE dated 17.03.2012 applies to waste and scrap of precious metal compound or metal clad with precious metal; i.e. it applies to waste and scrap of gold, silver and platinum or metals clad with gold, silver or platinum. It was submitted that their factory does not produce any precious metals like gold, silver or platinum. Therefore, when there is no production of precious metal there cannot be any generation of waste and scrap of precious metal occurring in the course of manufacture of goods falling under chapter 71.

4.4 It was further pointed out that the revision application had failed to consider the difference between waste and scrap of gold, silver and platinum vis-à-vis waste and scrap containing gold, silver and platinum of a kind used for recovery of precious metal. It was averred that it was not open to the Department to force the exemption upon them. The respondent rejected the contention of the Department that raw anode

slime emerging in the course of manufacture of goods falling under chapter 74 would not be eligible for exemption but that processed anode slime would be eligible for exemption as the waste and scrap emerging at each stage constitutes a set of process which are ultimately designed for recovery of precious metal(products falling under chapter 71). In this regard, the respondent stated that none of the processing undertaken by them is aimed at recovery of precious metals and that all the processes are aimed only at extraction of metals from the anode slime. They further stated that it was also not that these processes have to be necessarily undertaken before the process of extraction of precious metal can be undertaken. On the contrary, the respondent contended that precious metals could be recovered directly from raw anode slime itself and that it is not necessary/essential to undertake any of the processes undertaken by them. The respondent further stated that the processes undertaken by them after generation of raw anode slime i.e. leaching, desalinization etc. are optional processes.

4.5 The respondent stated that the Department had failed to appreciate that anode slime emerges as a by-product in the course of manufacture of copper cathode and contains in it metals such as copper, copper tellurium, selenium, bismuth, nickel sludge etc and also contains in it traces of elements of precious metal compound. The processing undertaken by them on the raw anode slime was for extraction of metals such as copper, copper tellurium, selenium, bismuth, nickel sludge etc and not for extraction of precious metal. They stated that it was based on the computation of cost benefit analysis that they undertake the process of extraction of metal from the anode slime and export the remnant anode slime which the overseas buyer may extract more metal as also precious metal compound or use them as such. The respondent submitted that none of the processing undertaken by them is aimed at enabling recovery of precious metal, that all the processing undertaken by them is to derive maximum economic advantage from anode slime which contains in it various metals as also traces of precious metal compound and that the extraction of metal was a purely commercial activity.

The respondent alluded to the letter F. No. CC/PER/1/2012-SRPS/CCU dated 21.05.2012 wherein he had admitted and accepted that the processed anode slime exported from their Tuticorin factory was 'other waste and scrap' containing precious metal or precious metal compound of a kind primarily used for recovery of precious metal. It was further stated that the same categorization had been confirmed by the Chief Commissioner, Vadodara vide his office letter F. No. V/16/72/12/4404 dated 11.10.2012 addressed to the CBEC as well. The respondent submitted that since the contention of the Department in the revision application was contrary to the admitted position, it was clearly untenable and unsustainable.

4.6 It was observed that the Department had traversed beyond the scope of the proceedings before the lower authority and contended in the revision application that though anode slime contained precious metals in compound form, this by itself did not make it ineligible for exemption under the notification as by virtue of Chapter Note 6 to Chapter 71 reference to precious metal in the said chapter note included reference to alloys of precious metals and as per Chapter Note 5, alloys include sintered mixture and an inter-metallic compound. The respondent averred that the Department had failed to note that there is no evidence to show that the processed anode slime was an alloy of precious metal. In fact, there was no precious metal present in the anode slime and that whatever was present in it was in compound form. They further stated that this contention in the revision application was completely baseless and not supported by any documentary evidence. It was also pointed out that as per Note 5 alloy includes sintered mixture and an inter metallic compound which the revision application deliberately or otherwise misreads and wrongly extracts as "sintered mixture and inter metallic compounds". The respondent submitted that the anode slime was neither an alloy of precious metals nor was it a sintered mixture or inter metallic compound.

4.7 The respondent further stated that the revision application proceeds on the erroneous premise that the processed anode slime was exempt from payment of duty and that in terms of Section 5A(1A) of the CEA, since the same is absolutely exempt, no duty could have been paid by them. They contended that this contention was completely baseless as none of the processes undertaken by them was for extraction of precious metal. Moreover, the said exemption was not an absolute exemption as it applies only to waste and scrap of precious metal or metal clad with precious metal arising in the course of manufacture of goods falling under Chapter 71. The respondent further pointed out that since there was a condition attached to the said exemption, it cannot be termed absolute and as such the condition therein cannot be read into the case at hand. It was further averred that if the finding that anode slime is waste and scrap of precious metal is taken to its logical conclusion, it would lead to a situation where duty had been paid when duty was not required to be paid. The respondent submitted that in such situation it has been held in a number of cases that refund of duty paid is required to be granted as it is the settled legal principle that only goods should be exported and not the taxes thereon. In this regard, the respondent placed reliance upon the judgments in the case of Commissioner vs. Sun City Alloys Pvt. Ltd. and CCE & C, Vadodara-II vs. Jayant Oil Mills[2009(235)ELT 223(Guj.)]. The respondent on the basis of these submissions, submitted that the revision application filed by the Department had no merits and deserved to be dismissed in limine.

5. A personal hearing was granted in the matter on 25.02.2020. Shri P. Kathirvel, Deputy Commissioner appeared on behalf of the applicant Department. He reiterated the grounds of revision application and prayed that the OIA be set aside. Shri Akshit Malhotra, Advocate appeared on behalf of the respondent. He placed reliance upon the Circular No. 71/4/2012-Cx. dated 14.07.2015 and submitted that the product was to be classified as per its state at the time of export. He further stated that the exemption was for waste and scrap of precious metal falling. He also placed reliance upon the judgments in the case of Sesa Sterlite Ltd. vs.

UOI[2016(337)ELT 366(Mad.)], Sesa Sterlite Ltd. vs. UOI[2015(323)ELT 54(Mad.)], Ravi Foods Pvt. Ltd. vs. Commr. Of Cus. & C. Ex.(Appeals), Hyderabad[2018(16)GSTL 80(A.P.)] & Commissioner vs. Sun City Alloys Pvt. Ltd.[2007(218)ELT 174(Raj.)]. Upon change in Revisionary Authority, fresh hearing was granted. Shri Akshit Malhotra, Advocate appeared online and reiterated the submissions already made and prayed that the OIA be upheld.

6. Government has carefully gone through the relevant case records and perused the impugned orders-in-appeal and orders-in-original. Government observes that the short issue involved in these revision applications is the classification of the anode slime exported by the applicant and whether anode slime is exempt as per the entry at Sr. No. 195 of Notification No. 12/2012-CE dated 17.03.2012. The answer to these questions would determine whether the duty paid by the applicant while exporting the anode slime would be rebatable under Rule 18 of the CER, 2002.

7.1 Government observes that the case made out by the Commissioner of Central Excise, Tirunelveli is based on the directions of the Chief Commissioner, Coimbatore Zone to the Commissioner of Central Excise, Tirunelveli vide his letter C. No. CC/Per/1/2012-Sr. PS CCO dated 21.05.2012 involving the facts concerning the applicant in the instant case. The Chief Commissioner, Coimbatore Zone also made a reference to the Board seeking clarification on the issue vide his letter C. No. IV/16/140/2010/AE(CCO)PF1 dated 30.07.2012. The said reference has been answered by the CBEC vide Circular No. 71/4/2012-CX.1 dated 14.07.2015. The contents of para 11 detailing the pending quasi-judicial proceedings and para 15 to 21 in which the inferences drawn by the Board after discussing the issues threadbare are stated are reproduced below.

“Pending quasi-judicial proceedings :

11. It is observed from the WP No. 5643 of 2015 filed by the party that on the same issue, proceedings for different periods are pending at various stages. As per

the details in para 19 of the subject Writ Petition, the status of those cases are as follows:

S. No.	Period	Amount involved (in Rs.)	Present status as per WP filed by the party
1	August 2011 to January 2012	166,83,21,408	Commissioner of Central Excise, Tirunelveli had passed Order-in-Original No. 02/CE/COMMR/2013 dated 13.03.2013 confirming the demand of erroneous paid rebate of Rs. 166,83,21,408. CESTAT has vide order dated 28.01.2014 remanded the matter for de-novo adjudication and is pending with the Commissioner of Central Excise, Tirunelveli.
2	February 2012 & March 2012	35,34,86,306	Pending before Revisionary Authority, Delhi
3	April 2012	6,73,52,902	Pending before Revisionary Authority, Delhi
4	January 2013 to March 2013	31,98,71,573	Pending before the Commissioner of Central Excise, Tirunelveli
5	April 2013	66,32,053	Pending before Revisionary Authority, Delhi

12. For the period.....”

“15. It may be noted that the heading 7112 of Central Excise Tariff Act, 1975 covers the following products :

- (a) Waste and scrap of precious metals or of metal clad with precious metal;
- (b) Other waste and scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal.

16. *The Note 4(A) to Chapter 71 of the Central Excise Tariff defines the expression "precious metal" means, silver, gold and platinum.*

17. *It may be noted that exemption notification covers goods of description "waste and scrap of precious metals or metals clad with precious metals" which is similar in language to part (a) of heading 7112 as mentioned above. The question to be examined is whether part (b) of heading 7112 is covered by exemption notification or not. For this to be covered by exemption notification, two conditions should be satisfied viz. (i) item should be waste and scrap of precious metals and (ii) such waste and scrap should arise in the course of manufacture of goods of chapter 71.*

18. *Regarding the first condition i.e. whether Anode Slime is a waste and scrap of precious metal, it is observed that anything can be called as waste and scrap of precious metals only if it is generated out of manufacturing of precious metals. The Anode Slime contains only traces of precious metals or precious metal compounds and hence it is not covered under the term 'waste and scrap of precious metal'. Therefore, Anode Slime does not fall under part (a) of heading 7112 but falls in part (b) of the said heading which covers 'other waste and scrap containing precious metal or precious compound'. Since, the exemption is available to only part (a) of the heading 7112, the first condition of the notification is not satisfied.*

19. *Even though Anode Slime is not covered under that part of the tariff head which is included in the exemption, for analysis, the second condition of the notification is further examined hereafter. The second condition to be satisfied for the exemption is whether this waste and scrap has arisen in course of manufacture of goods falling in Chapter 71. Anode Slime is generated either during the extraction of copper which is not a precious metal or during the further processing of raw Anode Slime when more copper and selenium, tellurium etc. are extracted. None of these materials is considered to be a precious metal of Chapter 71. Hence, the Anode Slime does not arise during the course of manufacture of goods falling under Chapter 71.*

Conclusion & Order :

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 17-3-2012.*

(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 15-4-2015 of the Hon'ble High Court. The adjudicating and appellate authorities may pass suitable orders in accordance with law."

7.2 On going through para 11 of the Circular, it can be seen that the Member(Central Excise), CBEC has listed out the pending quasi judicial proceedings from W.P. No. 5643 of 2015 filed by M/s Sesa Sterlite Ltd. on the same issue for different periods pending at various stages. The case appearing at Sr. No. 3 of the Table therein pertains to April 2012 involving an amount of Rs. 6,73,52,902/- and has been shown as pending before the Revisionary Authority, Delhi. As would be apparent from the period involved and the amount, the Revision Application finding mention in the Writ Petition is R.A. No. 198/18/2014-RA. Therefore, the clarification contained in the circular would be fully applicable to the facts of the present case.

7.3 It is further observed that the anode slime has been held to be classifiable under chapter 7112 of the CET and not entitled for exemption in terms of Sr. No. 195 of Notification No. 12/2012-CE dated 17.03.2012. The Board has clarified that the views expressed on merits are in compliance of the Orders dated 15.04.2015 issued by the Madurai Bench of the Hon'ble High Court of Madras in W.P.(MD) No. 5643 of 2015 filed by M/s Sesa Sterlite Ltd. It may be recalled that the instant case is one of the cases stated to be pending quasi judicial proceedings in the said

W.P.(MD) No. 5643 of 2015. However, since the issue involved is a mixed question of law and fact, the Board has clarified that the circular would not substitute due process of law and therefore the adjudicating and appellate authorities may pass suitable orders in accordance with law.

8. It is observed that the Board has analyzed the issue in detail and arrived at the conclusion. On examining the issue on merits, Government discerns that the anode slime is waste and scrap containing precious metals/precious compounds of a kind used principally for recovery of precious metal. It is on record that the anode slime contains precious metals. Therefore, the anode slime merits classification under chapter heading 7112 of the CETA, 1985. Likewise, the exemption available for such goods under Notification No. 12/2012-CE dated 17.03.2012 is only in respect of goods arising in the course of manufacture of goods falling under chapter 71 whereas in the present case the anode slime is a byproduct arising during the course of manufacture of copper products falling under chapter 74 of the CETA, 1985. Government, therefore, concurs with the views expressed in the circular dated 14.07.2015 and holds that the anode slime is correctly classifiable under chapter heading 7112 of the CET and that anode slime is not exempt under Notification No. 12/2012-CE dated 17.03.2012.

9. Be that as it may, the Madurai Bench of the Hon'ble High Court of Madras again had occasion to examine the same issue in the case of Sesa Sterlite Ltd. vs. UOI[2016(337)ELT 366(Mad)]. In that case, it had been alleged that the duty paid on anode slime was not duty as the said product was exempt and therefore CENVAT credit of duty paid was not admissible. The Division Bench of the Hon'ble High Court relied upon the Circular issued vide F. No. 71/4/2012/CX.1 dated 14.07.2015 to set aside the OIO confirming the demand for recovery of such CENVAT credit.

10. Likewise, while deciding the revision applications filed by M/s Sterlite Industries India Ltd. in R.A. No. 195/681/2013-RA and R.A. No. 195/682/2013-RA, it has come to notice that the demands for recovery of

the rebate claims sanctioned for the period from August 2011 to January 2012 to the applicant in these proceedings has been dropped by the Commissioner of Central Excise, Tirunelveli vide OIO No. 42/COMMR/CE/2016 dated 28.03.2016. It is observed that while passing that adjudication order, the Commissioner has solely relied upon the CBEC Circular No. 71/4/2012-CX.1 dated 14.07.2015. The order dated 28.03.2016 passed by the Commissioner, Tirunelveli reveals that the jurisdictional authorities have conceded that the anode slime is dutiable. As a corollary thereto, the duty payment on the goods and the sanction of rebate by the original authority cannot be found fault with. Furthermore, the judgment of the Division Bench of the jurisdictional Hon'ble High Court of Madras in Sesa Sterlite Ltd. vs. UOI[2016(337)ELT 366(Mad)] has decided the issue of dutiability of anode slime in the case of the same respondent and is therefore a binding precedent.

11. In the light of the observations recorded hereinbefore, Government finds no reason to interfere with the impugned OIA No. TNL-CEX-000-APP-264-13 dated 24.12.2013 passed by the Commissioner of Central Excise(Appeals), Madurai and therefore upholds the same. The revision application filed by the Department is rejected.


21/06/22
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 638/2022-CX (SZ) /ASRA/Mumbai DATED 21.6.2022

To,
M/s Sesa Sterlite Ltd.
SIPCOT Industrial Complex,
Madurai Bypass Road,
T. V. Puram,
Tuticorin - 628 008

Copy to:

1. The Commissioner of CGST & Central Tax, Madurai
2. The Commissioner of Central Excise(Appeals), Coimbatore
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file