

“Manage the cause, not the result.”

– W.E Deming

*ARS Steel & Alloys International Pvt. Ltd. vs. The State Tax Officer, inspection, intelligence
(High Court of Madras) [24.06.2021]*

NO REVERSAL OF ITC IN RESPECT OF LOSS OF INPUTS DURING MANUFACTURING PROCESS

Manufacturing has emerged as one of the high growth sectors in India. Prime Minister of India, Mr Narendra Modi, launched the ‘Make in India’ program to place India on the world map as a manufacturing hub and give global recognition to the Indian economy. The manufacturing sector of India has the potential to reach US\$ 1 trillion by 2025. The implementation of the Goods and Services Tax (GST) will make India a common market with a GDP of US\$ 2.5 trillion along with a population of 1.32 billion people, which will be a big draw for investors.

During the manufacturing process it results in the inherent losses to Inputs. The said losses are an unavoidable to the manufacturing process. An attempt is made to discuss the Writ petition challenge before Hon’ble Madras High Court by M/s ARS Steels & Alloy International Pvt. Ltd. (Petitioner) to the assessment order issued for the periods 2017-18, 2018-19 and 2019-20 by the State Tax Officer. The impugned orders seek to reverse a portion of the ITC claimed by the petitioners, proportionate to the loss of the input, referring to the provisions of Section 17(5)(h) of the GST Act which denies input tax credit relating to goods **lost**, stolen, destroyed, written off or disposed by way of gift or free samples.

The petitioners are engaged in the manufacture of MS Billets and Ingots. MS scrap is an input in the manufacture of MS Billets and the latter, in turn, constitutes an input for manufacture of TMT/CTD Bars. There is a loss of small portion of inputs, inherent to the manufacturing process. The loss in case of petitioner is occurred by the process of manufacture (inherent losses) cannot be compared with any instances mentioned in clause (h) of section 17(5) indicate loss of inputs that are quantifiable and involve external factors or compulsions.

The reference was also drawn from the case of Rupa & Co. Ltd. Vs. CESTATE, Chennai (2015 (324) ELT 295), wherein a Division Bench of Madras High Court decided a question of law with respect to reversal of CENVAT credit on the difference between the original quantity of input and the input in the finished product. The Bench noticed that *Some amount of consumption of the input was inevitable in the manufacturing process, held that CENVAT credit should be granted on the original amount of input used notwithstanding that the entire amount of input*

would not figure in the finished product. Thus, the total quantity of inputs that went into the making of finished product represents the input of such products in entirety.

In the light of discussion as above, it was held that the no reversal of ITC under section 17(5)(h) is required in cases of loss by consumption of inputs which is inherent to manufacturing loss as the said loss is not covered by the situations explained under section 17(5)(h).

This judgement shall act as an aide to the taxpayers engaged into manufacturing of some product where in the manufacturing process leads to some loss (in nature of consumption of inputs) inherent and unavoidable to the manufacturing process and are served notices or demand orders seeking proportionate reversal of ITC.

03.07.2021

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