CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I
(E-Hearing)
Excise Appeal No.70010 of 2020

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/218-219/2019-20 dated 26/08/2019 passed by Commissioner (Appeals) Central Goods & Service Tax, Meerut)

Commissioner of Central Excise &
Service Tax, Meerut **.....Appellant**
(CCS University, Mangal Pandey Nagar, Meerut)

VERSUS

M/s M.Q. Steels Pvt. Ltd., **....Respondent**

(7th KM Stone, Meerut Road, Muzaffarnagar)

WITH

Excise Appeal No.70011 of 2020

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/218-219/2019-20 dated 26/08/2019 passed by Commissioner (Appeals) Central Goods & Service Tax, Meerut)

Commissioner of Central Excise &
Service Tax, Meerut **.....Appellant**
(CCS University, Mangal Pandey Nagar, Meerut)

VERSUS

M/s M.Q. Steels Pvt. Ltd., **....Respondent**

(7th KM Stone, Meerut Road, Muzaffarnagar)

APPEARANCE:

Shri Manish Raj, Authorised Representative for the Appellant
Shri Aalok Arora, Advoate for the Respondents

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.70214-70215/2025

DATE OF HEARING : 09 January, 2025
DATE OF DECISION : 09 January, 2025

SANJIV SRIVASTAVA:

These two appeals filed by the revenue are directed against Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/218-

219/2019-20 dated 26/08/2019 passed by Commissioner (Appeals) Central Goods & Service Tax, Meerut. By the impugned order, Commissioner (Appeals) has set aside the Order-in-Original.

2.1 Respondents are engaged in manufacture of MS Ingots classified under Chapter sub-heading No.7206.90 of the schedule of the Central Excise Tariff Act, 1985. With effect from 31.03.1998 they were working under compound levy scheme, as peer the provisions of Rule 96ZO of Central Excise Rules, 1944 read with provisions of Section 3A of Central Excise Act, 1944, for the purpose of payment of central excise duty.

2.2 On the basis of declared capacity of the induction furnace was 3.0 MT. Respondent was required to pay Central Excise duty amounting to Rs.5,00,000/- per month, in terms of Notification No.33/97 dated 01.08.1997 and in case of failure they were required to pay interest @18% per annum as provided under Rule 96ZO of the Central Excise Rules and provisions for equal amount of penalty was also built in the Rule.

2.3 Show cause notices were issued to the respondent as detailed in table below:-

SI. No.	SCN No. and Date	Period	Amt. of duty demanded
1.	C.No.V(3)Dem/545/98/727 dated 16.02.1999	31.03.1998 to 31.10.1998	Rs.7,10,215.00
2.	C.No.V(3)Dem/65/99/2414 dated 01.06.1999	01.02.1999 to 31.03.1999	Rs.8,39,285.00
		Total	**Rs.15,49,500/-**
1.	V(3)Dem/545/98/1523 dated 31.03.1999	01.11.1998 to 31.01.1999	Rs.13,33,333.00
2.	V(3)Dem/238/99/3561 dated 17.08.1999 .	01.04.1999 to 30.06.1999	Rs.12,16,666.00
3	V(3)Dem/345/99/1918 dated 08.12.1999	01.07.1999 to 30.09.1999	Rs.10,00,000.00
4.	V(3)Dem/36/2000/414 dated 02.02.2000	1.10.1999 to 31.12.1999	Rs.10,00,000.00
5.	/(3))Dem/143/2000/121 dated 27.04.2000	01.01.2000 to 31.03.2000	Rs.15,00,000.00
		TOTAL	**Rs. 60,49,999/-**

2.4 First two show cause notices were adjudicated vide Order in Original No.49-50/JC/2003 dated 05.09.2003 who confirmed the demand as follows:-

"a. Confirmed the demand of Rs. 7,10,215.00 Rs. 8,39,285.00 against M/s M. Q. Steels Pvt. Ltd., Muzaffarnagar, under Rule 9(2) of Central Excise Rules, 1944, read with Rule 96ZO(3) of central excise rules, 1944

read with Section 11A of Central Excise Act, 1944, raised vide four SCN(s) mentioned above.

b. Penalty of equivalent amount i.e. Rs. 7,10,215.00+ Rs. 8,39,285.00 was imposed upon the said Party under Rule 96ZO(3)(ii), ibid.

c. Interest @ 18% per annum on the outstanding amount of duty, upto Feb 2000 and after ward @ 24% per annum, was also demanded from them from the first day after the last date for payment till the day of actual payment of duty, under proviso 3(i) of Rule 96ZO(3), ibid."

2.5 Other show cause notices were adjudicated as per Order-in-Original No.9-13/ADC/2003 dated 26.03.2003 who confirmed as follows:-

"a. Confirmed the demand of Rs. 13,33,333.00 Rs. 12,16,666.00 Rs. 10,00,000.00 Rs. 10,00,000.00 Rs. 15,00,000.00 Rs. 60,49,999/- against M/s M. Q. Steels Pvt. Ltd., Muzaffarnagar, under Rule 9(2) of Central Excise Rules, 1944, read with Rule 96ZO(3) of central excise rules, 1944 read with Section IIA of Central Excise Act, 1944, raised vide four SCN(s) mentioned above.

b. Penalty of equivalent amount i.e. Rs. 60,49,999.00 was imposed upon the said Party under Rule 96ZO(3)(ii), ibid.

c. Interest @ 18% per annum on the outstanding amount of duty, upto Feb 2000 and after ward @ 24% per annum, was also demanded from them from the first day after the last date for payment till the day of actual payment of duty, under proviso 3(i) of Rule 96ZO(3), ibid."

2.6 These orders were challenged by Commissioner (Appeals) vide Order-in-Appeal No.71-CE/MRT-I/2005 dated 29.04.2005, who set aside both the orders and remanded the matter back to the Original Authority for re-adjudication by observing as follows:-

"......It is however, observed that the appellant's application for abatement of duty for the closure period of 31.08.98 to 12.10.98 and 10.02.99 to 13.04.99 is still pending with Commissioner, Central Excise, Meerut-I. The

outcome of those abatement applications since has direct bearing on the demand of duty and penalty, in my opinion; the adjudicating authority should have waited for Commissioner's decision on those applications before confirming demand. Further, the duty paid by the appellants on the basis of actual production under section 3 (4) was to be adjusted against the demand of the relevant period. In these facts, the impugned order-in-original is premature and deserves remand. In my opinion, to meet the end of justice, it would be justified to remand the case back to the original authority for passing a fresh order after taking into account the outcome of said abatement applications and after adjusting duty paid by the appellants during relevant period....."

2.7 Aggrieved revenue preferred appeal before this Tribunal, who vide Final Order No.A/1300-1306/2012-EX(DB) dated 26.10.2012 upheld the order of Commissioner (Appeals).

2.8 Thereafter, the show cause notices were again adjudicated by Order-in-Original No.69-70/JC/MRT-I/14 dated 28.08.2014 & Order-in-Original No.81-85/JC/MRT-I/14 dated 28.08.2014 confirming the duty demand along with applicable interest and penalty.

2.9 Both the orders were appealed before Commissioner (Appeals), who again set aside the orders and remanded the case back to the Original Authority for re-adjudicated with direction to decide the case afresh according to the observations made by the Appellate Authority.

2.10 Thereafter, in terms of remand order the cases has been adjudicated by the Original Authority as per the Order-in-Original No.23/ADC/MRT/2018 dated 20.09.2018 by holding as follows:-

"ORDER

I hereby confirm the demand of Central Excise duty of Rs. 7,10,215.00 + Rs. 8,39,285.00, totaling to Rs. 15,49,500/- [Rupees Fifteen Lakh Forty-Nine Thousand Five Hundred only less adjustment of duty paid as determined in Para 34 supra against M/s M. Q. Steels Pvt.

Ltd., Meerut Road, Muzaffarnagar for the period for the period 31.03.1998 to 31.10.1998 and 01.02.1999 to 31.03.1999, respectively, in terms of Rule 9(2) and Rule 96ZO(3) of the Central Excise Rules, 1944 read with Section 11A of the Central Excise Act, 1944;"

2.11 By Order-in-Original No.22/ADC/MRT/2018 dated 20.09.2018 Original Authority has held as follows:-

"ORDER

I hereby confirm the demand of Central Excise duty of Rs. 60,49,999/- [Rupees Sixty Lakh Forty-Nine Thousand Nine Hundred and Ninety-Nine only less adjustment of duty paid as determined in Para 34 supra against M/s M. Q. Steels Pvt. Ltd., Meerut Road, Muzaffarnagar for the period 01.11.1998 to 31.01.1999, 01.04.1999 to 30.06.1999, 01.07.1999 to 30.09.1999, 01.10.1999 to 31.12.1999 and 01.01.2000 to 31.03.2000, respectively, in terms of Rule 9(2) and Rule 96ZO(3) of the Central Excise Rules, 1944 read with Section 11A of the Central Excise Act, 1944;"

2.12 Aggrieved respondent have filed appeal before Commissioner (Appeals) who set aside the orders of Original Authority.

2.13 Aggrieved revenue have filed these appeals on the following grounds:-

"2. While filing appeals against orders-in-original No. 22 23/ADC/MRT/2018 both dated 20.09.2018, the respondent claimed that appeal against the order of rejection of abatement claims was being filed in CESTAT, Allahabad. However, there is no evidence to the effect that implementation of the aforesaid orders dated 15.03.1999 and 13.08.2018, has been stayed by competent authority/forum/court. As such, the OIOs dated 20.09.2018 were passed by the adjudicating authority, after taking into account the circumstances prevalent at the material time. Apart from making orders as contained under para 37, the following directions were given to the jurisdictional Deputy/Assistant Commissioner of the

Division under para 34, which are being reproduced below for the sake of convenience:

Thus, as per ACP duty determined earlier, vide letter C.No. V(30)/M-1/T/ACP/297/98/3677 dated 15.03.1999 as 9600 MT vis-à-vis option exercised under Rule 96 ZO (3) of the Central Excise Rules, 1944, the party are required to pay Central Excise duty liability @ Rx. 5,00,000/- per month. Thus, for the period covered under above said five SCN (8). I find that the said party is liable to pay Central Excise duty of Rs. 13,33,333.00, Rs. 12,16,666.00, Rs. 10,00,000/-, Rs. 10,00,000/-, Rs.15,00,000/- totaling to Rs. 60,49,999/-, in terms of Rule 96ZO (3) of Central Excise Rules, 1944 for the duty liability based on installed capacity. As regards, directions of Commissioner (Appeals) to adjust the duty paid during the relevant period, I find that amount of Rs. 14,50,001/- has been adjusted in the impugned SCNs, while raising demand. As regards duty payments other than amount adjusted in impugned SCNs. I direct party to produce documentary evidences/ challans towards duty payment, if any, towards their duty liability for the period covered in impugned SCNs to the jurisdictional Divisional Deputy/Assistant Commissioner within fifteen days of receipt of this order and direct jurisdictional Divisional Deputy/Assistant Commissioner to verify, finalise and communicate to the party, within seven days of receipt of such evidences/challans from party, total amount of duty to be adjusted in the tax liability of Rs. 60,49,999/- in the impugned SCNs and total tax liability after such adjustment."

3. In compliance of above directions, when the exercise was undertaken by Assistant Commissioner, CGST Division-1, Muzaffarnagar, the respondent failed to submit copy of challans evidencing payment of duty within the time period prescribed. Accordingly, the jurisdictional Assistant Commissioner passed an order on 29.11.2018 *and communicated it to the respondent. The said facts in the form of comments/ cross objections, were also communicated by him to the appellate authority vide his letter dated 20.12.2018 which finds mention under para 4 of the impugned OIA. The attitude of the respondent reflects utter disregard towards various activities/exercises undertaken by the officers of the department and towards law of the land. It appears that no other duty payments were made by the respondent in this regard, except which have already been taken into account. Under these circumstances, setting aside of OIOs dated 20.09.2018 even after having been pointed out by the jurisdictional Deputy/Assistant Commissioner, will create an atmosphere that there did not exist rule of law or respect for law.*

4. Factual matrix of this case is not with regard to applicability of the provisions of Section 11 or Section 11A of Central Excise Act, 1944. Rather, the issue is demand of duty by the department, for the period concerned in view of determination of ACP and rejection of abatement claims by the competent authority as per law and also in view of the fact such orders were/are not stayed by a competent authority/forum/court. The decisions of the Hon'ble Supreme Court of India in the case of Hans Steel Rolling Mill vs. Commissioner of Central Excise, Chandigarh (2011(265) ELT-321(SC)), though in favour of the department, and of the Hon'ble High Court at Allahabad in case of Commissioner of Central Excise, Meerut vs. Aswad Steels Alloys Pvt. Limited (2014(35) STR-24(All.)), are not applicable in the circumstances of this case and are distinguished."

3.1 We have heard Shri Manish Raj learned Authorized Representative appearing for the revenue and Shri Aalok Arora learned Counsel appearing for the respondents.

3.2 Learned Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

3.3 Arguing for the appellant learned Counsel submits that-

- As the Order-in-Appeal dated 26.08.2019 was reviewed vide order dated 24.12.2019, which has been passed beyond the prescribed time limit of three months. The appeal should be dismissed on this very ground itself but the Tribunal has condoned the delay in filing the appeal.
- On merits the SCNs were issued in 1999 & 2000 and first Order-in-Original has been passed on 26.03.2003 under Section 3A and Rule 96ZO and the same were omitted vide Section 121 of Finance Act, 2001. Therefore all the orders passed after relevant date of 2001 being without jurisdiction as held by Hon'ble High Court of Gujarat in the case of Gopal Iron & Steel Co. Gujarat Ltd. Vs UOI 2024-TIOL-1071-HC-AHM. This judgment has been followed by Ahmedabad Bench of this Tribunal in the case of Lucky Dyeing Mills Pvt. Ltd. Final Order No.12288-12289/2024 dated 01.10.2024.
- Hence, these appeals also need to be dismissed for this very reason.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 For dismissing the appeals, impugned order records as follows:-

> *"I have carefully gone through the facts and records of the case as well as the submissions made by the appellant. The issue involved in the appeals pertains to the payment of Central Excise duty in terms of Rule 96ZO of the CER for the period 01.03.1998 to 31.03.2000. In the first round of appeals filed by the appellant the Commissioner (Appeals) vide OIA's dated 29.04.2005 had set aside the Orders-in-nendel Original and remanded the case back to the adjudicating authority, wherein he had, inter alia observed that -*
>
> > *"………Therefore, two procedures, namely, one as provided under sub-section (4) of Section 3A of the Central Excise Act, and the other as provided under*

sub-rule 3 of Rule 962O of the Central Excise Rules are alternative procedures and the assessee have to opt for the one. Once having done so he cannot claim the benefit of the other. This view finds support from the Hon'ble Supreme Court decision in UOI vs. Supreme Steel & General Mills- 2001 (133) ELT 513 (SC). Therefore, the appellant contention regarding paying duty on the basis of actual production under Section 3A (4) of the CEA, 1944 is not tenable."

I further find that the Commissioner (Appeals) vide OIA's dated 29.04.2005, had remanded back the matter to the adjudicating authority with specific directions to decide the matter a fresh after considering the outcome of the applicant's application for abatement of duty for the closure period, pending with the Commissioner of erstwhile Central Excise Meerut-1. In the second round of appeals the Commissioner (Appeals) while deciding the appeals filed by the appellant, in the same matter, again remanded back the matter to the adjudicating authority vide OIA's dated 06.05.2015 with direction to decide the matter a fresh strictly according to the observations made in OIA dated 29.04.2005.

7.1 The appellant has contended that the issue of abatement has already been decided by the Hon'ble Tribunal in the case of Aswad Steels & Alloys Pvt. Limited [2009 (243) E.LT. 370] and the appeal filed by the department against the same has been rejected by the Hon'ble High Court, Allahabad as reported in 2014 (35) STR 24(ALL). He also submitted that the major portion of the demand of duty pertained to abatement of duty for the closure period for which appeal was being filed before the Hon'ble CESTAT, Allahabad and the present appeals may be decided after decision of the Hon'ble CESTAT in appeal pertaining to abatement of duty.

7.2 I find that the appellant, during the period from 31.03.98 to 31.03.2000, was working under compound levy scheme under erstwhile Section 3A of the Act read with Rule 96ZO of CER. The jurisdictional Commissioner vide C. No. V (30)M-I/ACP/T/ACP/98/3677 dated 15.03.1999 deterrnined the ACP in terms of the provisions of Induction Furnace Annual Capacity Determination Rules, 1997. Accordingly, the appellant was ordered to pay Central Excise duty of Rs. 5,00,000/- per month by following the provision of Rule 9620 (3) of CER, as opted by him. There is nothing on record that the ACP and monthly duty liability so determined was ever challenged by the appellant or was modified by any subsequent order. The appellant was therefore required to comply with the orders determining ACP and monthly duty liability. I, further, find that the appellant did not pay the said determined duty during the period from 31.03.98 to 31.03.2000 and made requests to the jurisdictional commissioner for the abatement of duty for the closure periods which have been decided by the Commissioner vide Order-in-Original No. 138/Commr./MRT/2018 dated 13.08.2018 wherein all claims filed by the appellant for abatement of duty covering the said periods have been rejected. I also find that the adjudicating authority, as per remand directions communicated vide OIA's dated 06.05.2015, after considering the rejection of the appellant's claim for abatement of duty, confirmed the demand of Central Excise duty vide impugned orders on the basis of ACP and duly determined vide order C. No. V(30)M-I/ACP/T/ACP/98/3677 dated 15.03.1999.

7.3 I further find that the appellant in his grounds of appeals filed on 26.11.2018 and in his additional submissions made at the time of personal hearing on 04.06.2019, categorically stated that since the major demand of duty pertained to abatement of duty for closure period for which appeal was being filed before the Hon'ble

CESTAT, There is, however, nothing on record to infer that the Order-in-Original No.138/Commr./MRT/2018 dated 13.08.2018 vide which the claims of abatement of the appellant have been rejected by the jurisdictional commissioner has either been stayed or set aside. Under the circumstances, and subject to the outcome of any appeals against the said order dated 13.08.2018, the order C. No.V(30)M-I/ACP/T/ACP/98/3677 dated 15.03.1999 holds ground for the purpose of payment/ recovery of central excise duty. The case law relied upon by the appellant is related to the abatement of duty which is not relevant for the purpose of the present appeals.

7.4 I further find that the Hon'ble Supreme Court in the case of M/s Hans Steel Rolling Mill vs. Commissioner of Central Excise, Chandigarh reported in 2011(265) ELT (S.C.), have held as follows:-

> *13. The judgments of this court in the cases of Commissioner of C. EX & Customs v. Venus Castings (P) Lid as reported in 2000 (117) ELT. 273 (S.C.) and Union of India v. Supreme Steels and General Mills as reported in 2001 (133) ELT 513 (S.C.), has clearly laid down the principle that the, compound levy scheme is a separate scheme altogether and an assessee opting for the scheme is bound by the terms of that particular scheme. It is settled matter now that Section 11A of the Act has no application for recovery under different schemes.*
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> *14. In the case of Collector of Central Excise, Jaipur v. Raghuvar (India) Ltd. as reported in 2000 (118) ELT. 311 (S.C.), this court has categorically stated that Section 11A of the Act is not an omnibus provision which stipulates limitation for every kind of action to be taken under the Act or Rules. An example can be drawn with the Modvat Scheme, because even in that particular scheme. Section 11A*

of the Act had no application with regard to time limit in the administration of that scheme.

15. We are in agreement with the finding and decision arrived at by the Tribunal that the importing of elements of one scheme of tax administration to a different scheme of tax administration would be wholly inappropriate as it would disturb the smooth functioning of that unique scheme. The time limit prescribed for one scheme could be completely unwarranted for another scheme and time limit prescribed under Section 11A of the Act is no exception."

In view of the above the provisions of section 11A of the Act were not applicable for the recovery of the central excise duty the quantum of which was already fixed/determined by the jurisdictional commissioner. The show cause notices issued for the recovery of the central excise duty under Section 11A of the Act were, therefore, legally not sustainable and were bad in law as there was nothing to be adjudicated by the adjudicating authority after the central excise duty was already determined by the Commissioner. The impugned orders passed against the show cause notices which were legally not sustainable were also not sustainable."

4.3 We find that in the present case the show cause notices were issued to the respondents invoking the provisions of Section 11A of the Act. From the show cause notice dated 02.02.2000 following para is to be noted:-

"M/S M. Q. STEELS (P) Ltd, Muzaffarnagar, are required to show cause to the Joint Commissioner, Central Excise, Meerut-I, as to why duty amounting to Rs.10,00,000/- being the Central the central excise duty short paid during the period 01.10.99 to 31.12.99 and interest due thereon, should not be demanded/recovered from them under Rule 9(2) read with section 11A of Central Excise Act 1944, and

also why penalty should not be imposed upon them under Rule 96ZO of the Rules ibid.”

Same para is appearing in all the show cause notices for making the demands.

4.4 Commissioner (Appeals) has in the impugned order relied upon the decision of Hon’ble Supreme Court in the case of M/s Hans Steel Roling Mill 2011 (265) ELT 321 (SC) wherein Hon’ble Supreme Court have held that provisions of Section 11A cannot be invoked for making the demand and he set aside the Orders-in-Original.

4.5 It is a fact that proceedings were initiated under the provision which could not have been invoked as per the decision of Hon’ble Supreme Court. We do not find any merits in the appeal filed.

5.1 Appeals are dismissed.

(Operative part of the order pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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