FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 21/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/71486-71488/2017-EX[DB]** dated **08/09/2017**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2669/2007	**DEVIDAYAL ALUMINIUM INDS.(P) LTD.** HOTEL GOPAL PLAZA RAILWAY ROAD BAZARIA GHAZIABAD (U.P) 201009
2	E/2670/2007	**RAKESH ARORA** M/S DEVIDAYAL ALUMINIUM INDS. (P) LTD. HOTEL GOPAL PLAZA, RAILWAY ROAD BAZARIA,GHAZIABAD (UP)
3	E/2671/2007	**RAJ KUMAR AGARWAL** M/S DEVIDAYAL ALUMINIUM INDS. (P) LTD. , HOTEL GOPAL PLAZA, RAILWAY ROAD, BAZARIA , GHAZIABAD (UP)
		Name and Address of Respondent
4		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302
5		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302
6		-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE (ADJ. INCOME TAX OFFICE), STANLEY ROAD, CIVIL LINES, ALLAHABAD (U.P.)-211001

8 Bar Association, CESTAT, Allahabad

9 Director Publications, Customs, Excise. I.P. Estate, Delhi

10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

11 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

12 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

16 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

17 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

18 C.D.R. 19 Office Copy 20 Second Folder Copy 21 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL Nos.E/2669-2671/2007-EX[DB]

(Arising out of Order-in-Original No. 13/Commr/GZB/07 dated 15/03/2007 passed by Commissioner of Central Excise & Customs, Ghaziabad)

M/s Devidayal Aluminium Inds. (P) Ltd.,

Shri Rakesh Arora,

Shri Raj Kumar Agarwal, **Appellants**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Bipin Garg, Advocate for Appellants
Shri Rajev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 08/09/2017
Date of Decision : 08/09/2017

FINAL ORDER NOs. 71486-71488/2017

Per: Anil G. Shakkarwar

The above stated three appeals are directed against a common Order-in-Original No. 13/Commr/GZE/07 dated 15/03/2007 passed by Commissioner of Central Excise & Customs, Ghaziabad. Therefore, they are taken together for disposal.

2. The brief facts of the case are that the manufacturer-appellants were issued with a show cause notice dated

14.06.2000 wherein it was alleged that they were undertaking manufacture of CRSS rolled products besides other items. Further, they were also engaged in same activity on manufacture of CRSS products only on job work basis and also involved in processing of scrap. The allegation in the show cause notice was that the appellants were undertaking cold rolling of CRSS products and reducing the size of the same and during the process they were increasing in the hardness and therefore, said process was covered by Sub-chapter note 4 of Chapter 72 and therefore, it amounted to manufacture. It was further alleged that appellants were not undertaking any trading activity but was clearing clandestinely, scrape manufactured by them under the garb of trading activity. Therefore, demand of Central Excise duty of Rs.68,03,588/- and Rs.22,59,131/- and Rs.8,35,751/- and Rs.86,28,489/- was raised through the said show cause notice. Further, there was a proposal to imposed personal penalty under Rule 209A of Central Excise Rules, 1944 on the other two appellants. The issue was adjudicated earlier through Order-in-Original No.16-17/Commr/MRT/2002 dated 22.04.2002 which were appealed against before this Tribunal.

3. The said appeals were dealt with in Appeal No.E/2657-2659/2002. The said appeals were decided through Final Order No.1-3/2004-B dated 01.01.2004 by this Tribunal.

This Tribunal remanded the matter back to the Original authority with following directions:-

> "We also observe that the learned Adjudicating Authority has not considered the technical literatures and certificates produced by the Appellants. The issue involved is a technical one as to whether the process of reducing the size by cold roll process can be equated with the "process of hardening or tempering" mentioned in Note 4 to Chapter 72 of the Central Excise Tariff. The Adjudicating Authority should have considered the technical material furnished by the Appellants and, if required, should have obtained the technical opinion from experts in the field. As this exercise has not been done, we are of the view that the matters should go back to the jurisdictional Adjudicating Authority to consider the technical material and to obtain, it deem fit, the expert opinion on the issue involved in these appeals. As we are remanding these appeals to the jurisdictional Adjudicating Authority, all other issues including limitation, penalty etc. can be raised by the Appellants before the Adjudicating Authority for consideration."

In compliance to the directions of remand impugned Order-in-Original was issued bearing No.13/Commr./GZB/07 dated 15.03.2007 wherein the Original authority confirmed the demand and imposed penalties on the appellants-manufacturers and also imposed personal penalty of Rs.50lakhs on Shri Raj Kumar Agarwal and personal penalty of Rs.20lakhs on Shri Rakes Arora. Aggrieved by the said order, appellants are before this Tribunal.

4. Learned Counsel for appellants has submitted that this Tribunal through the said Final Order dated 01.01.2004 remanded the matter back to the jurisdictional adjudicating authority and kept the issue of limitation open and allowed the appellants to raise the issue of limitation before the original authority. He further submitted that they had pleaded before the original authority that the show cause notice was time-barred, in view of the time to time declaration

of classification list under Rule 17B of the Central Excise Rules, 1944 and vide their letter dated 28.03.1994 addressed to the Jurisdictional Assistant Commissioner, confirming him about the trading activity being undertaken by the manufacturer appellant. He has submitted that the original authority has dealt with the issue of limitation in last para appearing on page No.34 of the impugned Order-in-Original. He has further submitted that the grounds raised by them were not appreciated by the original authority and original authority held that the said show cause notice was not hit by limitation. He has further submitted that the copy of classification list bearing Sl. No.1/95-96 submitted by them to the Jurisdictional Assistant Commissioner was assigned classification C. No. 16/95-96 by the Jurisdictional Assistant Commissioner. In the said classification list item 6 was related to "particulars of excisable goods, including wholly exempted produced or manufactured by the appellants" and subsequent to item No.6 the heading of declaration was "particulars of other goods produced or manufactured and intended to be removed by assessee" and under such table at Sl. No.5 they had informed there intention of undertaking reduction of size of materials such as Aluminum sheets, Iron & Steel, Stainless steel, Copper and copper alloys and also informed that deduction in size did not amounts to manufacture and further submitted that the allegation regarding manufacture was related to Stainless steels about which declaration was given in the said classification list informing the jurisdictional authorities that these goods were not a manufactured product and it was included in the particulars of other goods produced by manufacturer. He has further submitted that the said classification was approved for items under item No.-6 by the Jurisdictional Assistant Commissioner. He has further submitted that the copy of the said classification list other such classification lists and other such classifications declarations were submitted in paper book. He has further submitted that at page-55 of the said paper book a copy of letter submitted by the manufacturer-appellants to the Jurisdictional Assistant Commissioner is available through which they had informed that they were engaged in trading activity of such as stainless Steel, Brass Scrap, Bottom items, etc. which were components and parts of Pressure Cookers. He submitted that in view of all clear declarations given to the jurisdictional officers to the said classification list to ~~through~~ which Sl. No.16/95-96 was assigned by Jurisdictional Assistant Commissioner and through letter dated 28.03.1994 through which the appellants had submitted to the Jurisdictional Assistant Commissioner the suppuration for invocation of extended period is not sustainable.

5. Heard the learned A.R. who has supported the impugned order.

6. Having considered the rival contentions and on perusal of records, we find that the show cause notice was issued on 14.06.2000 and the period covered was 30.09.1995 to 11.04.2000. During the relevant period normal period of show cause notice was 6 months. Further, under Section 11A of Central Excise Act, 1944 as it existed during material period when the extended period is invoked then in the wording of the Section the words are substituted for 5 years. The word '6 months' does not continue to remain. Therefore, once the extended period is invoked, the normal period is not available for invocation. We therefore, hold that the show cause notice dated 14.06.2000 is hit by limitation. Since the show cause notice is not sustainable. We set aside the impugned Order-in-Original and allow all the appeals filed by the appellants. The appellants are also entitled for consequential relief, as per law.

(Dictated in Court)

Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

akp

प्रमाणित प्रति/Cerified True Copy
12/12/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001