CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K.G. Road, BANGLORE-560009.

COURT – 1

Central Excise Appeal No. 784 of 2012

[Arising out of the Order-in-Original No.03/CCE/2011, dated -06.01.2012 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysore.]

M/s. STEEL AUTHORITY OF INDIA LTD
VISVESVARAYA IRON & STEEL PLANT
BHADRAVATI – 577 301.
....Appellant

Vs.

The Commissioner of Central Excise
Mysore Commissionerate
S1 & S2, Vinaya Marga,
Siddarthanagar,
Mysore – 577 001.
....Respondent

Appearance:

Ms. Sudheeshna Banerjee, Advocate	....For Appellant
Mr. H. Jayathirtha, Superintendent (AR)	.... For Respondent

CORAM:

HON'BLE DR. D. M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER No. 20798 /2023

DATE OF HEARING: 13/06/2023
DATE OF DECISION: 13/06/2023

Per R. BHAGYA DEVI:

M/s. Steel Authority of India Ltd., the appellants are Public Sector Undertaking engaged in the manufacture of iron and steel Products falling under Chapter 72 and other miscellaneous products of the Central Excise Tariff Act, 1985. They carried out Annual Stock Verification of the goods on 31st March every year for the purpose of preparation of Annual Reports. Appellants prepare excess/deficit of finished goods and semi-finished goods and scrap of each year and copies of the same are being submitted to the Department.

2. In the present appeal, a show-cause notice was issued demanding differential duty on the ground that the physical stock of finished / semi-finished goods shown in the Annual Stock Statement varied when compared with the opening balance of Stock Balance of these products as per ER – 1 returns. The Commissioner vide the impugned Order-in-Original No.3/2011 dated 6.1.2012 confirmed the demand by invoking the proviso to Section 11A of Central Excise Act, 1944 along with interest and imposed penalty under Section 11AC.

3. Ms. Sudheeshna Banerjee, learned advocate for the appellant submits that the learned Commissioner has held that since the excess clearances have been admitted by the appellants as reflected in their audited books of accounts, no further corroborative evidence is required which is totally baseless as they had only produced their annual stock taking reports and had not admitted for any excess clearances without payment of duty.

3.1 Learned advocate submits that the goods produced are recorded in RG1 based on estimation as the physical stock of goods was on the basis of volumetric estimation and its conversion into theoretical weight based on average cross-sectional weight. The goods are physically weighed only at the time of clearance of the goods from the factory/depots. Therefore, comparison of estimated production as recorded in RG1 and estimated physical stock of goods as on 31st March of each year amounts to comparison of two estimates which is inherently incorrect and leads to distorted conclusions. The excess/deficiency in stock was due to the fact that both production and physical stock taking was based on estimates whereas the clearances were based on actual weighment. If these facts are taken into consideration, it is claimed that there would be no shortage of goods attracting levy of excise duty in as much as duty was paid on all the goods that were cleared from the factory which is an admitted fact.

3.2 Appellants further claim that the Board had issued two circulars i.e., (i) CBEC Circular No.4/73/70/CS 6/1971 dated 12.4.1971 and (ii) CBEC Circular No.52/79 CS 6 dated 16.10.1979 laying down guidelines for condonation of losses in addition to the different practices followed in the Steel Plants for accounting production, clearance, stock taking, etc., and to consider the explanation offered by the plants while examining excess/deficit of the goods during stock taking. Since stock taking was regularly done and intimated to the department, the above Boards Circulars are also on record, therefore, the question of invoking proviso to Section 11A does not arise as there is no suppression or *mala fide* intention to avoid payment of duty.

3.3 She further submitted that CESTAT in their own case as reported in **2006 (200) ELT 229 (Tri.-Bang.)** has set aside the demand. They also relied upon the following judgments:

(i) Final Order No.20435/2023 dated 25.5.2023 in appellant's own case.

(ii) SAIL, Rourkela Steel Plant vs. CCE, Bhubaneshwar: 2001 (137) ELT 566 (Tri.-Kol.); and

(iii) Rashtriya Ispat Nigam Ltd. vs. CCE, Visakhapatnam: 2009 (235) ELT 248 (Tri.-Bang.)

4. The learned Authorised Representative for the Revenue reiterated the findings in the impugned order.

5. We find that the show-cause notice demanded duty on the differential quantity between the physical stock as reported by the appellant in their Annual Stock taking statements as against the ER-1 returns. It is an admitted fact that Order-in-Original No.8/2002 dated 30.10.2002 on similar facts and circumstances were issued to the appellant in their Mangalore unit by confirming the demand on the differential quantities. This order was set aside by this Tribunal vide Final Order No.1745/2005 dated 4.10.2005. It is also a fact that the Commissioner of Central Excise, Mysore vide Order-in-Original No.1/CCE/2008 dated 31.3.2008 confirmed the demand on similar set of facts and this order was set aside by this tribunal vide Final Order No.20435/2023 dated 25.05.2023.

5.1 The appellant is a public sector undertaking and one of the large tax payers subject to regular audit by the officers from Central Excise and the Accountant General's department. The appellant has submitted that the Books of Accounts were audited periodically during the disputed periods referred in the show-cause notice.

5.2 The Commissioner in the impugned order has confirmed the demand only on the ground that Rule 10(1) of the Central Excise Rules, 2002 is categorically about maintenance of records and there is no provision to deviate from the said Rules. He also states that shortages observed in physical stock taking itself is an evidence of clandestine removal; and, he invokes proviso to Section 11A on the ground that the department had come to know all the facts only in 2009 after Annual Stock taking statement was filed by the appellant. But by the earlier show-cause notices and orders, it is indicative that the department was aware of these facts and the question of invoking proviso to Section 11A without any allegation of suppression or fraud is not sustainable. The fact that clandestine removal of any goods has not been proved with any evidences except to state that the statements of shortages itself proves the offence of clandestine removal is too farfetched.

5.3 Further, in the appellant's own case reported in **2006 (200) ELT 229 (Tri.-Bang.)**, this Tribunal has held that the discrepancy between the RG1 stock and the physical stock are based on the estimated production and not on actual weighment. Comparison between two estimations is inherently inaccurate. Because of these shortages, if any, is inflated due to errors in taking opening balance and physical stock. Considering the practical difficulties in estimating the actual stock and in view of the submissions made by the appellant, the Tribunal had set aside the impugned order.

5.4 In the case of **Rourkela Steel Plant (SAIL) vs. CCE, Bhubaneswar: 2001 (137) ELT 566 (Tri.-Kolkata)**, the

Tribunal had held that even if there are differences in the stock taking and the shortages are found, the duty can be demanded only when they are removed from the factory. The findings on the clandestine manufacture and removal cannot sustain against the appellants as Revenue has not provided any proof of clandestine removal. Accordingly, demand was set aside.

5.5 Recently, this Tribunal in appellant's own case vide Final Order No.20435/2023 dated 25.5.2023 on same set of facts had allowed the appeal of the appellant.

5.6 By following the ratio of the above judgments and based on the observations as recorded above, the demands are set aside and accordingly, penalty is also set aside.

6. In the result, the impugned order is set aside and the appeal is allowed.

(Order dictated and pronounced in Open Court.)

(DR.D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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