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

COURT - 1

Central Excise Appeal No. 28206 of 2013

(Arising out of Order-in-Original No.MYS-EXCUS-000-COM-001-13-14 dated 29.08.2013 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysuru.)

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

WITH

1. Central Excise Appeal No.20430 of 2015 (M/s. Steel Authority of India Ltd.)

(Arising out of Order-in-Original No.MYS-EXCUS-000-COM-001-12-14-15 dated 2.12.2014 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysuru.)

2. Central Excise Appeal No.20463 of 2015 (M/s. Steel Authority of India Ltd.)

(Arising out of Order-in-Original No.MYS-EXCUS-000-COM-011-14-15 dated 2.12.2014 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysuru.)

3. Central Excise Appeal No.20464 of 2015 (M/s. Steel Authority of India Ltd.)

(Arising out of Order-in-Original No.MYS-EXCUS-000-COM-010-14-15 dated 2.12.2014 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysuru.)

4. Central Excise Appeal No.20174 of 2017 (M/s. Steel Authority of India Ltd.)

(Arising out of Order-in-Original No.MYS-EXCUS-000-COM-GVK-08-16-17 dated 15.11.2016 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysuru.)

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. 20799 - 20803 /2023

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

Per R. BHAGYA DEVI:

All these five appeals are taken up together for disposal, as the issue involved is common in all these appeals. The details of appeals are given below:

Appeal No.	OIO No.	Period	Duty	Penalty
E/28206/2013	MYS-EXCUS-000-COM-001-13-14 dt. 29.08.2013	1.4.2009 to 31.3.2010	Rs.9,26,59,195/-	Rs.9,26,59,195/-
E/20430/2015	No.MYS-EXCUS-000-COM-001-12-14-15 dt. 2.12.2014	1.4.2012 to 31.03.2013	Rs.5,76,10,106/-	Rs.5,76,10,106/-
E/20463/2015	No.MYS-EXCUS-000-COM-011-14-15 dt. 2.12.2014	1.4.2011 to 31.03.2012	Rs.10,78,49,370/-	Rs.10,78,49,370/-
E/20464/2015	No.MYS-EXCUS-000-COM-010-14-15 dt. 2.12.2014	1.4.2010 to 31.03.2011	Rs.15,09,24,274/-	Rs.15,09,24,274/-
E/20174/2017	No.MYS-EXCUS-000-COM-GVK-08-16-17 dt.15.11.2016	1.4.2013 to 31.03.2014	Rs.7,52,28,312/-	Rs.7,52,28,312/-

M/s. Steel Authority of India Ltd., the appellants, are the manufacturers of Iron and Steel Products falling under Chapter 72, 73 and 84 and other miscellaneous products of the Central Excise Tariff Act, 1985. Appellants conduct annual stock verification of finished/semi-finished goods manufactured by them for every financial year.

2. In the present appeals, show-cause notices were 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 of production and clearance as per ER – 1 returns. The Commissioner vide Order-in-Original No.3/2011 dated 6.1.2012 has 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 counsel on behalf of 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. She submits that appellants had not admitted that there were excess clearances as compared to the duty paid clearances in their ER-1 returns. Further, it is submitted that the goods produced are recorded in RG1 based on estimation. The physical stock of goods was on the basis of volumetric estimation and its conversion into theoretical weight is 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 ER1

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. Therefore, they claimed that there are no shortages as such attracting levy of excise duty.

3.1 She further claims 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 and also with regard 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. Submitting that earlier number of notices were issued for various branches on the same set of facts and hence the question of invoking proviso to Section 11A for the future periods did not arise as there is no suppression or *mala fide* intention to avoid payment of duty.

3.2 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. **SAIL, Rourkela Steel Plant vs. CCE, Bhubaneshwar: 2001 (137) ELT 566 (Tri.-Kol.)**

ii. **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. The appellants are Public Sector Undertaking engaged in the manufacture of iron and steel. They carry out Annual Stock Verification of the goods on 31st March every year for the purpose of Annual Reports and these reports which reflect excess/deficit of finished goods and semi-finished goods and scrap are submitted to the Department. 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 the 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, which has been set aside 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 period in the show-cause notice.

5.2 In the impugned orders, the demand has been confirmed on the ground that Rule 10(1) of the Central Excise Rules, 2002 about maintenance of records has not been followed by the appellants and the shortages have been noticed annually which clearly proves that the goods have been clandestinely removed without payment of duty. They also claimed that the shortages are much beyond the condonation of losses as laid down by the Board Circular. However, we find that these shortages itself cannot be a ground for evidence of clandestine removal. Further, the impugned orders invoke 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. However, going by the above orders and earlier show-cause notices, 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. Moreover, regular notices were issued for different units of the appellant at Mangalore, Bhadravati and Mysuru and these notices confirmed by the Commissioners were set aside by this Tribunal. Hence, the present appeals based on similar facts do not sustain.

5.3 Further, the appellant's in their own case reported in **2006 (200) ELT 229 (Tri.-Bang.)**, the 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 provide 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 orders are set aside and the appeals are allowed.

(Order dictated and pronounced in Open Court.)

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

(R. BHAGYA DEVI)
MEMBER (TECHNICA)

rv