CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 689 of 2009

(Arising out of Order-in-Original No. 02/2009-C. Ex. (Commr.) dated 31.03.2009 passed by the Commissioner of Central Excise & Customs, Thiruvananthapuram.)

M/s. NORATEL INDIA POWER COMPONENTS PVT. LTD.
(Formerly known as TOROID INDIA PVT. LTD.)
Nila Techno Park Campus,
Kariavattom,
Thiruvananthapuram. — Appellant(s)

VERSUS

THE COMMISSIONER OF CENTRAL EXCISE
I.C.E Bhavan, Press Club Road,
Thiruvananthapuram – 695 001. — Respondent(s)

WITH

Central Excise Appeal No. 786 of 2009

(Arising out of Order-in-Original No. 02/2009-C. Ex. (Commr.) dated 31.03.2009 passed by the Commissioner of Central Excise & Customs, Thiruvananthapuram.)

THE COMMISSIONER OF CENTRAL EXCISE
I.C.E Bhavan, Press Club road,
Thiruvananthapuram – 695 001. — Appellant(s)

VERSUS

M/s. NORATEL INDIA POWER COMPONENTS PVT. LTD.
(Formerly known as TOROID INDIA PVT. LTD.)
Nila Techno Park Campus,
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APPEARANCE:

S/Shri Ravi Raghavendra and Md. Ibrahim, Advocates for the Appellant
Shri H. Jayathirtha, Superintendent (AR) for the Respondent

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

FINAL ORDER NO. 20571 - 20572 /2024

DATE OF HEARING: 05.04.2024

DATE OF DECISION: 26.07.2024

PER: R. BHAGYA DEVI

M/s. Noratel India Power Components Pvt. Ltd. [earlier M/s Toroid India Pvt. Ltd.] (hereinafter referred to as M/s. Noratel) an approved 100% EOU under EHTP scheme and are engaged in the activity of manufacture and clearance of Toroidal Transformers falling under Chapter 8504 of the schedule to the Central Excise Tariff Act (CETA), 1985. They are also engaged in the manufacture of metal scraps and mylar scrap. These two appeals filed against Order-in-Original No.2/2009 C.EX. dated 23.04.2009; one by the appellant and the other by the respondent, the Revenue. While the appellant is in appeal against the demand confirmed and the penalties imposed therein, whereas the Revenue is in appeal against dropping of part of the demand and against the benefit of Notification No.2/95-CE dated 04.01.1995 being extended to the appellant along with partly reducing the penalty under Section 11AC of the Central Excise Act, 1944.

2. Briefly stated the facts are that on specific intelligence and search of the premises of the said unit, it was observed/alleged that the appellants have manufactured and removed Toroidal transformers in Domestic Tariff Area (DTA), copper scrap, steel scrap, mylar scrap, plastic spools without payment of appropriate rate of duty of Excise, without observing the formalities prescribed and without the cover of proper invoices during the period 05.02.1999 to 30.06.2002. Based on the records and documents recovered from the appellants and other relevant parties like transporters, courier offices, buyers, etc., the Department compiled Annexures I to XIII, which contained the workings of the alleged duty liability on several counts.

Accordingly, the appellants were issued with Show-cause Notice No. 02/2004 dated 01.03.2004 demanding a total duty of Rs.2,54,01,781/-. The Commissioner on verification of various documents and based on the verification reports submitted by the Range Officers confirmed duty only to the extent of Rs.30,39,220/- and dropped the balance amount of duty. Further, by extending the benefit of Notification.No.2/95-CE dated 04.01.1995, confirmed the duty of Rs.15,19,610/- along with interest and imposition of penalty. Observing that part of the confirmed demand had been paid prior to the issuance of the notice, imposed penalty under Section 11AC only for the remaining amount of duty to be paid. Aggrieved with the above Order-in-Original, the Department as well as the party are in appeal before this Tribunal.

3. The learned Counsel on behalf of the appellants, at the outset, submitted that the Appellant contested the demands in respect of Annexure-I, V, and VII as these demands mainly relate to small quantities of samples sent to the customers, which the appellants were on the *bona fide* belief that they were not liable to duty. However, on being informed by the Department that duty is payable even on such removals, the duty involved along with interest has been paid.

3.1 With regard to Annexure II and XIII, it is submitted that the Range Officer's report in respect of Annexure-II has been misunderstood by the Commissioner. The verification report verifies and accepts that duty has been paid on scrap cleared from Sl. No. 1-8, 10-12, 14-16 of Annexure-II. In respect of Sl. Nos. 9 and 13, it is submitted that the scrap was generated out of duty paid raw material and consequently, not dutiable. Reliance is placed on the following decisions:

- Elphinstone Metal Rolling Mills Vs. CCE - 2004 (167) ELT 0481 (SC)

- Hindalco Industries Ltd. v. Union of India - 2015 (315) E.L.T. 10 (Bom.) affirmed by the Hon'ble Supreme Court - 2019 (367) E.L.T. A246 (S.C.)

3.2 Further, it is claimed that in respect of clearances made to Mythri Enterprises and others from Sl. No. 17-23 of Annexure-II, duty was subsequently paid on 16.07.2002 which has been verified by the Range Officer and accepted. With regard to Sl. Nos. 24 and 25 relating to clearance of 1,200 kgs. of steel scrap, it was submitted before the learned Commissioner that the goods in question were not cleared but only an invoice was raised. In respect of clearances made to Sl. No. 1 and 2 of Annexure-XIII, duty was subsequently paid on 16.07.2002 which has been verified by the Range Officer and accepted.

3.3 For the demands under Annexure III, the learned counsel submits that the Range Superintendent in his report clearly furnished the endorsement that he had verified all connected invoices which supports the appellant's contention that each of these removals are in fact duty-paid. The only objection of the Superintendent was that the date of removal does not tally with the dispatch date and the date of removal does not tally with the dispatch date because of the pattern of removals, i.e., removals effected under private documents being either preceded by a proper duty paying invoice or being followed by a duty paying invoice. This explanation has been accepted by the Commissioner in respect of other Annexure-I. IV and XII to the Show-cause-Notice, but, has been rejected without any reasoning in respect of Annexure III. For Annexure VI demands, it is stated that the Range Officer vide his report dated 14.7.2008 has confirmed that all the invoices in respect of Annexure-VI was verified, but, the only objection of the Range Officer was with reference to non-intimation of cancellation of invoice within 24 hours. Therefore, the confirmation of the demand is contrary to the factual verification undertaken by the Range Superintendent. That no statutory requirement exists to report the cancellation of invoices within 24 hours to the Range Officer. Hence, the demand is not sustainable.

3.4 Referring to the benefit of exemption Notification No.2/1995-CE dated 04.01.1995, the learned counsel claims that it is available even in respect of goods removed clandestinely. Reliance is placed on the following decisions:

- Euro Cotspin Ltd. vs. CCE, Delhi - 2001 (127) ELT 52 (Tri.-Del)
- Sri Chakra Tyres v. CCE, Madras - 1999 (108) E.L.T. 361 (Tribunal - LB)
- Affirmed by the Hon'ble Supreme Court - CCE vs. Srichakra Tyres Ltd. 2002 (142) E.L.T. A279 (S.C)]
- CCE, Jaipur-II vs. Modern Polyster Yarn - 2002 (149) E.L.T. 377 (Tri. - Del.)
- Madhucon Granites Pvt. Ltd. vs. CCE, Hyderabad - 2013 (292) E. L.T. 530 (Tri. - Bang.)

3.5 It is further submitted that the Hon'ble Supreme Court though has remanded the matter in the case of Euro Cotspin Ltd. (supra) without any findings on the issue of eligibility to claim the Notification, the decision of the Tribunal in the case of **Euro Cotspin Ltd.,** was followed in the case of ***Sri chakra Tyres*** (supra), which has been affirmed by the Hon'ble Supreme Court and has been consistently followed by the Hon'ble Tribunal in various decisions. Since, no detailed grounds in the Departmental Appeal for confirmation of entire duty demand along with interest and penalty; as the entire case of the Department is based on assumptions, vague statements and uncorroborated evidence, the same is unsustainable in law.

4. The Authorised Representative submits that the Adjudicating Authority has dropped the entire demands made under the other Annexures and confirmed only to the extent of

Rs. 15,19,610/-. The Department contends that the findings of the Adjudicating Authority is illegal and erroneous as he has failed to examine/evaluate the evidences and documents forming part of the show-cause notice. While giving his findings Annexure-wise, the Adjudicating Authority has neither examined the evidences/documents nor considered the verification report of the jurisdictional Range Officers in totality. He submits that the adjudicating authority has considered the report of the Range officer only to the extent of clearances made under ARE-3s and has not even discussed the other portion of the report, wherein the Range Officer has reported that there is no corroboration between the proforma invoices and the duty-paid invoice with reference to the reconciliation statement submitted by the party. On the contrary, he has held that the issue pertains to clandestine removal and Department has not undertaken proper investigation. The Adjudicating Authority has thus failed to independently consider/examine/discuss evidences brought out in the show-cause notice and hence, the findings to that extent is totally against the principles of justice and statutory law.

4.1 He further submitted that it is on record that the jurisdictional Range Officer in his report after verification of the reconciliation statement submitted by the assessee had reported that the invoice date, date of removal as claimed by the assessee does not tally with the date of despatch. It has also been reported that the figures of date of despatches shown under different Annexures are found to be not tallying with the DTA invoices. In this regard, it may be seen that the product manufactured by the assessee are toroidal transformer i.e., transformers used in the electronic/electric circuits/gadgets and it does not have any unique identification marks for corroboration. The goods are identified by model number only and there are number of particular models manufactured and there is no corroborative evidences/markings to prove that a particular product cleared under a particular proforma invoice has later been duty-paid under another DTA invoice on a later date. Hence, though the assessee had filed the reconciliation statement, they had failed to prove the duty-paid nature of the goods cleared under proforma invoices, courier receipts, etc., in the absence of adequate corroborative evidences with regard to the identification of the goods and date of its clearance.

4.2 The Revenue referring to the statement of Mr. Rajesh, Partner, Roy Varghese and Associates, Chartered Accountants, Trivandrum, the statutory auditors of the assessee for the year ending 31.03.2002, recorded on 12.06.2003 submits that the auditor on verification of the relevant records stated that he was not aware of the fact that the transformers were cleared out of Toroid under the cover of proforma invoices; that their verification was based on sales invoices raised and recorded in the books of accounts of Toroid; that M/s. Toroid were not able to convince him even though they were given an opportunity to explain the discrepancies; that he had made a qualification as mentioned in his report. The statutory auditors have categorically stated that they were not satisfied with the explanation of the company regarding the clearances of the goods under proforma invoices and it’s duty payment particulars. In view of the above, the reconciliation submitted by the assessee does not have the acceptance/ approval of their statutory auditors and hence its genuineness and legitimacy is under doubt. In addition, the report of jurisdictional Range Officer has only furthered that the party has failed to prove the duty-paid nature of the goods cleared by them under proforma invoices and various other documents. Further, it is submitted that Smt. Shylaja Sreekumar, Senior Manager (P&A) admitted that she issued gate passes for all items moving out of the unit and that no specific verification was being done by her before issuing or rather signing the gate pass. It was brought to her notice that no invoices had been issued for clearances effected under 115 Nos. of gate passes that had been seized, she informed that she was unaware that invoices have not been issued. She also informed that she did not know whether all consignments were sent with a proper invoice. Further, according to Shri Kumardas, Sr. Executive, Logistics, whenever he is directed to prepare proforma invoice he would do so and when asked to prepare a proper invoice, he would act accordingly. On perusal of the registers and other documents recovered during investigation, it was observed that the invoices were not raised serially in as much as it was noticed that invoice No. 34 was issued on 14.05.2002; No. 13, 14A & 10A were issued on 25.05.2002; No. 11 was issued on 26.05.2002 and No. 65 & 66A were issued on 14.06.2002 while invoice No. 16 was issued on 18.06.2002.

4.3 Further, the assessee compiled the said clearances and submitted a compilation sheet along with their reply to the show-cause notice which was verified by the jurisdictional Range Officer and it was reported that the dates of the proforma invoices raised during its clearances were not tallying with the central excise invoices as contended by them. There were also no other corroborative entries to correlate and accept their contention. For example, in respect of Sl. No. 9 of Annexure VII, the date of despatch is shown as 19.11.2001, while the invoice date is shown as 29.09.2001; Sl. No. 46 of Annexure VII, the date of despatch is shown as 20.12.2001, while the invoice date is shown as 29.09.2001; Sl. No. 49 of Annexure VII, the date of despatch is shown as 04.03.2002, while the dates of 7 invoices are shown as 29.05.2001(2), 29.06.2001[3], 30.01.2002 & 28.02.2002; Sl. No. 1 of Annexure VIII, date of despatch is shown as 03.05.2002, while the invoice date is 31.01.2002; Sl. No.6 of Annexure X, the date of despatch is shown as 04.06.2002, while the date of invoice is shown as 30.03.2002; Sl. No. 5 of the Annexure X, the date of despatch is shown as

03.06.2002, while the date of invoice is shown as 30.03.2002. There are many entries where the date of despatch and date of invoice are totally different and the assessee have failed to correlate the said details.

4.4 It is abundantly clear that the transformers have been cleared under proforma invoices, courier receipts, lorry receipts, etc., without payment of duty. This fact has not been denied by the party and they had to prove the duty-paid nature of the said goods. The burden of proof had got transferred to the assessee once the Department had placed the records of clearance of goods without payment of duty. In view of the above discussions, it is seen that the assessee had failed to prove the duty-paid nature and the Adjudicating Authority was required to examine the documents/evidences placed before him by the Department, which has not been taken up by the said authority. In the light of the above, the department finds that the said findings in the Order-in-Original is not a speaking order and is not legal and proper and hence, the same is liable to be set aside.

4.5 The Department also contends that the extension of benefit of Notification No.2/1995-CE dated 04.01.201995 for payment of duty at concessional rate on the duty amount confirmed by the adjudicating authority is not proper. The adjudicating authority had confirmed an amount of Rs.30,39,220/- and keeping in line with the ratio of the decision in the case of **M/s. Euro Cotspin Ltd.: 2001 (127) ELT 52 [Tri.-Del.]**, wherein it was held that even in cases of alleged clandestine removal, the assessee would be entitled to exemption under Notification No.2/1995-CE dated 04.01.1995. It is observed that an appeal was filed by the department against the above cited order before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court had vide order dated 22.03.2007 observed that the order of the Tribunal does not give any reason in support of the conclusions arrived at and set aside the order passed by the Tribunal and remanded the case back to the Tribunal for a fresh decision in accordance with the law. Hence the said benefit is not proper and is liable to be set aside and the exemption extended to the assessee is liable to be set aside.

4.6 Further, after considering that the assessee had already paid an amount of Rs.5,44,750/- during investigations, balance amount of Rs.9,74,860/- was held to be the total duty to be confirmed and the liability as penalty under Section 11AC was reduced to that extent. The Hon'ble Supreme Court in the case of **M/s. Rajasthan Spinning and Weaving Mills** has observed that *"We completely fail to see how payment of the differential duty whether before or after the SCN is issued can alter the liability for penalty, the conditions for which are clearly spelled out in Section 11AC of the Act."* As a result, in pursuance to the above facts and decisions of the Hon'ble Supreme Court, the Adjudicating Authority should have confirmed an amount of Rs.30,39,220/- in this case and also should have imposed equivalent penalty of Rs.30,29,220/-.

4.7 Considering the above submission, the departmental appeal is liable to be allowed and the party appeals is liable to be dismissed.

5. Heard both sides. The period of dispute is from 05.02.1999 to 30.06.2002, the show-cause notice demanded duty of Rs. Rs.2,54,01,776/-. The issue before us is whether:

(i) The duty demanded by the Commissioner in the impugned order for Rs.15,19,610/- is liable to be confirmed or the original demand of Rs.2,54,01,776/- is to be confirmed as claimed by the Revenue in their appeal.

(ii) The second issue is whether the appellant-assessee is eligible for the benefit of exemption Notification No.2/95-CE dated 04.01.1995.

(iii) The third issue is whether the Commissioner was right in reducing the penalty under Section 11AC from Rs.15,19,610/- to Rs. 9,74,860/-.

The amounts confirmed and dropped are shown in the table below:

(Amounts in Rupees)

Annex. No.	Particulars	Duty demanded in SCN	Duty Dropped	Duty confirmed
I	Clearances	22,56,932/-	22,35,820/-	21,112/-
II	Scrap Clearances	23,57,556/-	0	23,57,556/-
III	Follow-up	5,41,287/-	0	5,41,287/-
V	E-mail/ Courier/LA	16,09,481/-	15,85,996/-	23,485/-
Annex. No.	**Particulars**	**Duty demanded in SCN**	**Duty Dropped**	**Duty confirmed**
VI	Cancelled invoices	5,08,855/-	4,55,211/-	53,644/-
VII	Patel Roadways	71,11,976/-	71,11,184/-	792/-
XIII	PVC Spool	41,344/-	0	41,344/-
TOTAL		**2,54,01,776/-**	**1,13,88,211/-**	**30,39,220/-**

5.1 The Commissioner in the impugned order has given detailed findings with regard to alleged clearances of transformers and scrap without payment of duty. This decision is based on factual reports by the Range Officers and based on the documents produced by the appellant at the time of adjudication which cannot be disputed unless there is any other evidence produced contra to this to substantiate the Revenue's claim that the original demand as per show-cause notice needs to be confirmed. For instance, for the amounts dropped at Annexure-I, the Commissioner has clearly held that regarding 17 removals of deemed exports, the Range Officer had reported that re-warehousing certificates were received in all the cases except two on which duty was paid. Similarly, another major amount that was dropped was in Annexure-VII where he has categorically mentioned that out of 51 cases based on the Range Officers report dated 14.07.2008 that 38 cases are deemed exports on which no duty is required to be paid, 12 cases duty was paid except for one case where the duty is confirmed. From the grounds of appeal filed by the Revenue, it is only stated that 'it appears that the Commissioner's findings on verification of these documents do not appear to be correct and the Commissioner should have confirmed the full amount'. Even in the written submissions filed by the Revenue, they do not substantiate their arguments with any relevant documents or any report of the Range Officer to allege that the amount demanded in the notice should have been confirmed. There being no other documents or verification done by the Department, the question of demanding the entire demand as per the notice does not arise. Therefore, since the Commissioner has given a detailed findings based on the Range Officers confirmation, the Revenue's appeal fails.

5.2 The amount confirmed by the Commissioner in the impugned order is as follows:

(Amounts in Rupees)

Annexure	Amount of duty confirmed	50% of the duty	Not contested by the appellant
I	21,112/-	10,556/-	Not contested
II	23,57,556/-	11,78,778/-	
III	5,41,287/-	2,70,644/-	
V	23,485/-	11,742/-	Not contested
VI	53,644/-	26,822/-	
VII	792/-	396/-	Not contested
XIII	41,344/-	20,672/-	
Total	**30,39,220/-**	**15,19,610/-**	

5.3 The appellant has disputed the demands only under Annexures II, III, VI and XIII. The Commissioner in the impugned order has confirmed demand of Rs. 11,78,778/- on waste and scrap cleared without payment of duty, which is not disputed by the appellant. However, the learned counsel relying on the document at page 544 of their written submission claims that duty had been paid on scrap for Serial No.1 to 8, 10 to 12, 14 to 16 of Annexure II and XIII. However, from Para 13 of the impugned order, Commissioner having noted that the appellant had claimed duty observes that 'the assessee stated that duty was subsequently remitted on these clearances under proper DTA invoices. But they could not put forth any correlating evidence to prove that their clearances effected under proforma invoices without duty payment were followed by DTA invoices on which duty was remitted. In as much as the receipt of the goods by the consignees was proved consequent to the enquiries done at the consignee's end, the demand in respect of the other clearances is liable to be confirmed.' The above observations of the Commissioner have not been countered with any evidences by the appellant except to produce the same document that was placed before the Commissioner which has been disputed. Similarly with regard to Serial No. 9 and 11, the Commissioner observed that the Range Superintendent vide his letter dated 14.07.2008 had reported that no documents were produced by the assessee to show that the items were duty-paid. It is also stated that in respect of other clearances, the same has been admitted. In view of the above, the submissions of the learned counsel that subsequently duty was paid cannot be accepted. It is a settled issue that waste and scrap are liable to duty even if it is generated out of duty-paid raw material. In view of the above, the confirmation of the demand of Rs. 11,78,778/- is upheld.

5.4 With regard to the amount confirmed under Annexure III, the learned counsel has argued that the report placed by the Superintendent only states that connected invoices duly verified but invoice date (date of removal) does not tally with the dispatch date. The Commissioner having accepted such invoices for other Annexures, the benefit of doubt cannot be denied. The

Commissioner having taken on record the above observations of the Range Superintendent held that 'it is evident that the assessee had effected clearances under proforma invoices without payment of duty. The assessee could not put forward any evidence to prove that the goods were properly accounted and duty was paid on clearing the same.' In view of the above, we do not find any reason to disagree with the Commissioner.

5.5 Coming to the demand at Annexure VI, the learned counsel claims that the only objection by the Range Officer was that cancellation of invoices were not intimated within 24 hours. From the impugned order at Para 23, it is very clear that the Commissioner had accepted the report dated 31.03.2009 from the Range Officer which states that duty was paid for Serial No.1,2,6 to 10 while for Serial No. 4 and 5 duty was not paid, hence duty was confirmed only for Serial No. 4 and 5. Therefore, this demand in our view needs to be sustained.

6. The second issue is whether the appellant is eligible for the benefit of exemption Notification No.2/1995-CE dated 04.01.1995. The Commissioner has relied on the decision of **M/s. Euro Cotspin Ltd. Vs. CCE, 2001 (127) ELT 52 (Tri-Delhi)**. Since this decisions has been set aside by the Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Chandigarh-I *Versus* Euro Cotspins Ltd 2011 (272) ELT 343 (S.C)**, the above decision is no more a good law. The Hon'ble Supreme Court in the above case observed as follows:

> "The respondent-assessee is a 100% export oriented unit engaged in manufacturing yarn. The preventive staff of the Central Excise Division, on a visit to the factory of the assessee found that a certain amount of goods were removed in a clandestine manner and without showing in the books of accounts were sold in the domestic tariff area in excess of the permissible limit without getting sanction from the concerned authority. It was further found that there was evasion of duty by the assessee. On the basis of the report submitted by the preventive staff

of the Central Excise Division, two show cause notice dated 1-11-1996 and 22-1-1998 for the period April, 1996 to July, 1996 and a corrigendum dated 6-11-1996 to the show cause notice dated 1-11-1996 were issued to the assessee.

2. The Authority-in-Original passed a detailed order confirming the demand of duty and imposed penalty. Penalty was also imposed on the Managing Director of the assessee Company.

3. The assessee, being aggrieved, filed an appeal before the Tribunal. The Tribunal has set aside the order to the extent of reduction in duty and penalty, as indicated in the order.

4. With the assistance of learned counsel for the parties, we have gone through the record, the Order in Original and the order of the Tribunal. We find that the order of the Tribunal does not record reasons in support of the conclusion arrived at. Faced with this situation, learned counsel appearing for the respondent-assessee states that he will not be able to support the order passed by the Tribunal and prays that the same be set aside and the case be remitted back to the Tribunal for a Fresh decision in accordance with law, leaving all the contentions open to the parties.

5. In view of the submission made by learned counsel for the respondent, we set aside the order passed by the Tribunal and remit the case back to the Tribunal for a fresh decision in accordance with law.

6. All contentions are left open to the parties. The Civil Appeals are, accordingly, disposed of".

6.1 Moreover, in the case of **Santogen Exports Ltd. vs. Commissioner of Central Excise, Raigad: 2014 (312) ELT 257 (Tri- Mumbai)**, the Tribunal observed as follows:

"Inasmuch as there is no permission granted by the Development Commissioner for the clearances made during 1995-96, the appellant would not be eligible for the benefit of Notification No. 2/95-C.E. as the concessional rate provided therein is in respect of clearances made in accordance with the permission granted by the Development Commissioner. Thus the demand of differential excise duty of Rs.

9,21,795/- is clearly sustainable in law and we hold accordingly".

In view of the above, since the clandestine removals are beyond permissible limits by the Development Commissioner, the question of extending the benefit of Notification No.2/1995-CE does not arise. Hence, the entire demand of Rs.30,39,220/- is confirmed.

7. Summing up:

(i) The appellant-assessee's appeal No. E/689/2009 is dismissed.

(ii) Departmental appeal No. E/786/2009 is partially allowed only to the extent of denying the benefit of Notification No.2/1995-CE dated 04.01.1995 to the appellant and the matter stands remanded to the original authority for redetermining the duty and with regard to penalty, to extend the benefit of Section 11AC(d) if the duty along with interest and reduced penalty is paid within the stipulated time as per law. The Revenue's appeal stands remanded, needless to say that an opportunity of being heard may be given to the appellant.

(Order pronounced in Open Court on 26.07.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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