CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/220/2009-DB

[Arising out of Order-in-Appeal No. 396-2008 dated 28/11/2008 passed by CCE(Appeals-I), Bangalore]

Commissioner of Central Excise ,
Customs and Service Tax
BANGALORE-I
NULL POST BOX NO 5400...CR BUILDINGS,
BANGALORE, - 560001

Appellant(s)

Versus

BHUWALKA ALLOYS(P) LTD
WHITEFIELD ROAD, BANGALORE

Respondent(s)

Appearance:

Dr. J. Harish, Dy. Commissioner(AR) — For the Appellant
None — For the Respondent

Date of Hearing: 24/07/2018
Date of Decision: 24/07/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20997 / 2018

Per : S.S GARG

The present appeal has been filed by the Revenue against the impugned order dt. 28/11/2008 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) set aside the Order-in-Original by allowing the appeal of the assessee.

2. Briefly the facts of the present case are that the assessee/respondent are manufacturer of hot re-rolled products. It was noticed that the assessee has manufactured and cleared 3554.046 MT of excisable goods viz. Hot Re-Rolled products under Notification No.214/86-CE dt. 25/03/1986 as amended without payment of duty. Further it was also observed that the fact of manufacture and clearance of Hot Re-Rolled products on job work basis was suppressed from Department to evade payment of duty. On this allegation, a show-cause notice was issued to the assessee demanding duty and interest and proposing to impose penalty under Section 11AC. By following the due process, the Jt. Commissioner, Bangalore vide Order-in-Original No.38/2008 dt. 12/08/2008 confirmed the demand of duty, interest and imposed equal penalty under Section 11AC. Aggrieved by the said order, assessee preferred appeal before the Commissioner(Appeals) and the Commissioner(Appeals) vide the impugned order allowed the appeal of the assessee by holding that the assessee is not required to pay duty on the goods manufactured on job work basis on the ground that the assessee is already working under Section 3A of Central Excise Act, 1944. Aggrieved by the said order, Revenue has filed the present appeal.

3. Heard the learned AR. None has appeared on behalf of the assessee. Since the issue is in narrow compass, we proceed to decide the appeal in the absence of the assessee.

4. Learned AR reiterated the findings of the impugned order.

5. On perusal of the impugned order, we find that the learned Commissioner(Appeals) has allowed the appeal of the assessee on the basis of decisions given by the Tribunal and the High Court on the same issue. Here it is pertinent to reproduce the findings of the Commissioner(Appeals) which is reproduced herein below:-

> *I also find that in similar case, the larger bench in the case of M/s. Mohinder Steels Ltd. Vs. CCE, Chandigarh (reported in 2002 (145) ELT 290 Tri. LB) has held that demand and time limit under Section 11A of Central Excise Act, 1944 is not applicable when the appellant is following a compounded levy scheme which is a comprehensive scheme and general provisions in the Central Excise Act and Rules are excluded. In the case of Dhiman Industries Steel Rolling Mills Vs. CCE, Chandigarh (reported in 2006(196) ELT 329 Tri. Del.), the tribunal has held "in as much as there is no dispute about the fact that rounds manufactured on job work basis, having discharged the duty liability under the compounded levy scheme, we find no justification for making such rounds liable to duty". The appeal preferred by the Revenue against the said tribunal order has been dismissed by the Hon'ble High Court of Punjab & Haryana (reported in 2007(219) ELT 67 (P&H)) holding that "Annual capacity been duly determined and assessee having paid duty according to said capacity, no provision by which a further duty can be demanded on ground that assessee had done job work, which was nothing else but use of utilization of parts of its manufacturing capacity – No substantial question of law arises for consideration".*

6. Further we find that this Bench of the Tribunal in the case of CCE, Bangalore Vs. Vijaya Steels Ltd. [2010(250) ELT 423 (Tri. Bang.)] has dismissed the appeal of the Revenue by relying upon the decision of the Punjab & Haryana High Court in the case of CCE, Chandigarh Vs.

Dhiman Iron and Steel Industries [2007(219) ELT 67 (P&H)]. The Punjab & Haryana High Court has held in para 6 as under:-

> ***6.*** *A reference to the above provisions shows that a special scheme for levy of excise duty is laid down therein notwithstanding scheme of Section 3 of the Act. Annual capacity having been duly determined and the assessee having paid duty according to the said capacity, there is no provision by which a further duty can be demanded on the ground that assessee had done job work, which was nothing else but use of utilization of part of its manufacturing capacity.*

7. Following the ratio of the above said decision, we do not find any infirmity in the impugned order which is upheld by dismissing the appeal of the Revenue.

(Operative portion of the Order was pronounced
in Open Court on **24/07/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...