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

Appeal(s) Involved:

E/20341/2016-SM, E/22127/2015-SM, E/22128/2015-SM, E/22129/2015-SM, E/22130/2015-SM

[Arising out of Order-in-Appeal No. CAL-EXCUS-000-APP-383/15-16 dated 09/12/2015 passed by Commissioner Of Central Excise, Customs and Service Tax, COCHIN]

[Arising out of Order-in-Appeal No. 39-40/15-16 dated 20/05/2015 passed by Commissioner Of Central Excise, Customs and Service Tax, COCHIN]

[Arising out of Order-in-Appeal No. 42/15-16 dated 20/05/2015 passed by Commissioner Of Central Excise, Customs and Service Tax, COCHIN]

[Arising out of Order-in-Appeal No. 41/15-16 dated 20/05/2015 passed by Commissioner Of Central Excise, Customs and Service Tax, COCHIN]

M/s. Gasha Steels Pvt. Ltd.
VIII/812-A, Nida, Kanjikode
PALAKKAD - 678621
KERALA

Appellant(s)

K Abdul Gafoor Md.
Gasha Steels Pvt. Ltd.
Nida, Kanjikode
PALAKKAD - 678621
KERALA

Appellant(s)

P A Amanulla, Director
Gasha Steels Pvt. Ltd.
Nida, Kanjikode
PALAKKAD - 678621
KERALA

Appellant(s)

Kaliyath Steels Pvt Ltd
Opp. Ramakrishna Mission High school,
Panniyankara
KOZHICODE.
KERALA

Appellant(s)

Versus

Commissioner of Central Excise,
Customs and Service Tax
Cochin-CCE
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN - 682 018.
KERALA

Respondent(s)

Commissioner of Central Excise,
Customs and Service Tax Calicut
CENTRAL REVENUE BUILDING,
MANANCHIRA, CALICUT,
KOZHIKODE – 673 001.
KERALA

Respondent(s)

Appearance:

Mr. M. N. Bharathi, Advocate
VMJ Associates
(S. Muthu Venkataraman, Adv.)
SKANDALAYA, OLD NO. 4,NEW #7,
JUSTICE SUNDARAM ROAD, MYLAPORE,
CHENNAI, - 600004
TAMIL NADU

For the Appellant

VMJ ASSOCIATES
#79, 17TH CROSS,
MALLESWARAM,
BANGALORE - 560003
KARNATAKA

For the Appellant

Mrs. Kavitha Podwal,
Superintendent (AR)

For the Respondent

Date of Hearing: 06/02/2019
Date of Decision: 06/02/2019

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20135-20139 / 2019

Per : S.S GARG

The appellants have filed these appeals against the impugned orders dated 9.12.2015 and 20.5.2015 vide which the Commissioner (A) has rejected the main appeal of the M/s. Gasha Steels Pvt. Ltd. on the ground of non-deposit of 7.5% of duty and penalty. Further, the Commissioner (A) in the case of co-noticees have imposed penalties under Rule 26 of Central Excise Rules, 2002.

2. For the sake of convenience, I take up the facts of the main appeal No. E/20341/2016 of M/s. Gasha Steels Pvt. Ltd.

2.1 M/s. Gasha Steels Pvt. Ltd., are engaged in the manufacture of CTD / TMT bars falling under Chapter 7214.90 of the Central Excise Tariff Act, 1985. It was alleged that M/s. Gasha Steels Pvt. Ltd., have manufactured and cleared 50.840 MT of CTD / TMT bars valued at Rs.11,83,079.88 without accounting the same and without payment of Central Excise duty. Demand was rasied for the clandestine removal of CTD bars by M/s. Gasha Steels Pvt. Ltd. and vide the impugned order the lower authority had confirmed Rs.1,89,292/- towards the clandestine removal of CTD bars & rods and confiscated the same under Rule 25 of Central Excise Rules, 2002 and imposed penalty under Section 11AC of Central Excise Act, 1944 and Rule 25 of Central Excise Rules, 2002. Aggrieved by this order, the appellant filed appeal before the Commissioner (A), who rejected the same. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been

passed only on the ground that the appellant has not deposited 7.5% of the duty and penalty. He further submitted that the Commissioner (A) has not gone into the merits of the case and rejected the appeal without affording an opportunity of hearing to the appellant. He further submitted that the appellant has made the mandatory pre-deposit of 10% before filing the appeal before this Tribunal and thereby, complied with the mandatory pre-deposit requirement under Rule 35F of the Central Excise Act, 1944. He further prayed that as the appellant have made the pre-deposit, therefore, the main appeal along with other appeals may be remanded to the Commissioner (A) with a direction to decide the appeals on merits.

5. After considering the submissions of both the parties and perusal of the material on record, I find that in the main appeal, the Commissioner (A) has not given any finding on the merit and has rejected the appeal of the appellant only on non-depositing 7.5% of the duty and penalty. I also find that the appellant have deposited 10% of the duty before this Tribunal and thereby complied with the requirement of Section 35F. In view of this, I am of the view that the impugned order is not sustainable and the same is set aside by remanding all the cases

to the Commissioner (A) with a direction to decide the same on merits by following the principles of natural justice and after affording an opportunity of hearing to the appellants.

(Operative portion of the Order was pronounced and dictated in Open Court on **06/02/2019.**)

S.S GARG
JUDICIAL MEMBER

rv...