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

E/354/2003, E/1389/2004

(Arising out of Order-in-Original No.3 to 7 dated 27.3.2003 passed by the Commissioner of Central Excise, Chennai I Commissionerate

M/s.United Metal Industries — Appellant

Vs

Commissioner of Central Excise, Chennai I — Respondent

Appearance

Shri G.Natarajan, Advocate For the Appellant
Shri.A.Cletus, ADC, K.P.Muralidharan For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing: **31.07.2017**

Date of Pronouncement :

FINAL ORDER No. 41372 - 41373 /2017

Per Bench

The issue involved in both these appeals being connected they were heard together and are disposed by this common order.

2. The appellants are manufacturers of Rerolled products of non alloy steel and are registered with the department. The goods falling under Chapter 72 (Rerolled products manufactured by appellants) were brought

Customs, Excise & Service Tax Appellate Tribunal

under Compounded Levy Scheme under sub-section (1) of Section 3A of Central Excise Act, 1944 and Rules 96ZO and 96ZP of Central Excise Rules Act, 1944. Thus appellants opted to pay duty on re-rolled products of non alloy steel as per this compounded levy scheme and filed declaration with the Commissioner of Central Excise in the prescribed format. The Commissioner of Central Excise provisionally determined the Annual Capacity of Production (ACP) of re-rolled products of non alloy steel as per the provisions of the Re-rolling Steel Mills and Annual Capacity Determination Rules, 1997, as 22755.00 MT and fixed the amount payable as Rs.5,68,875/- per month vide Sub-Rule (3) of Rule 96 ZP and communicated the same to the appellants. The ACP was finally determined at 22755 MT by the Commissioner vide his order dt.26.3.1998. However, the appellants did not discharge this duty liability according to the said ACP determination. A Show Cause Notice was issued for different periods raising the demand as per the ACP determined by above order passed by Commissioner. Meanwhile the said provisions under Rule 96ZP and 96ZO were subject to challenge before various High Courts as well as the Hon'ble Apex Court. The cases were kept in call book for some time and there after taken out and adjudicated. Thus the original authority vide Order dated 27.3.2003 confirmed the differential duty amount to the tune of Rs.1,17,84,627/- demanded as per the 5 SCN and imposed equal penalty besides demanding interest @ 18%. The appellants have filed Appeal No.E/1389/2004 against the order passed by Commissioner determining the Annual Capacity. Appeal No.E/354/2003

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

is filed against the confirmation of duty, interest thereon and equal penalty imposed.

3. At the time of hearing the Ld.Councel Shri.G.Natarajan submitted that the appellant is not contesting the duty demand and is confining his challenge in both these appeals only on the demand of interest and the penalty imposed. He relied upon the judgement in the case of Shree Bhagwati Steel Rolling Mills Vs. CCE – 2015 (326) ELT 209 SC and submitted that the Hon'ble Apex Court in the said judgement has quashed the provisions 96ZO, 96ZP and 96ZQ and therefore the demand of interest and the penalty imposed is un-sustainable. He therefore pleaded to set aside the demand of interest and penalty.

4. The Ld.AR Shri.A.Cletus reiterated the findings in the impugned order.

5. Heard both sides, the Ld.Councel for the appellants has submitted that appellant does not wish to contest the demand and is confining the challenge in the appeal only with regard to the demand of interest and the penalty imposed. The Hon'ble Apex Court in the case of Shree Bhagwati Rolling Mills has held that the levy of interest and penalty are invalid. Following the same we hold that the demand of interest and penalties imposed are unsustainable. The impugned order is modified to the extent of setting aside the demand of interest and the penalty imposed without disturbing the duty demand. The appeal

Customs, Excise & Service Tax Appellate Tribunal

No.1389/04 is dismissed. Appeal No.354/03 is partially allowed, in above terms by setting aside the demand of interest and penalties imposed without disturbing the duty demand.

6. The appeals are disposed accordingly.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
2/8
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(CESTAT)
चेन्नै/Chennai