IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH, CHENNAI

E/00346/2009

[arising out of Order-in-Original No.50/2009 (C), dated 02.04.2009 passed by the Commissioner of Central Excise, Pondicherry]

M/s.NEXUS ELECTRO STEEL LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, PONDICHERRY RESPONDENT

Appearance:

For the Appellant Shri V. Ravindran, Adv.,
For the Respondent Shri S. Govindarajan, AC (AR)

CORAM:

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

Date of hearing/decision **17-08-2017**

FINAL ORDER NO. 41773/2017

Per Bench:

M/s. Crompton Greaves Ltd., (M/s. CGL, in short) Mumbai had placed purchase orders with M/s. Nexus Electro Steel Ltd., (M/s. NESL, in short) for supply of "CRGO laminations" and in terms of said purchase orders, M/s. CGL were issuing invalidation letters in respect of their Advance Licence, so as to enable the appellants to import the raw material without payment of entire Customs duty against the Advance Licence. Thus, appellants imported raw materials and it appeared to the department that there was a flow of additional consideration to the appellants from M/s. CGL. On the irregularity being pointed out to the appellants, they debited an amount of Rs.4,46,193/- and Rs.14,70,678/- in their Cenvat account and also paid the interest treating the Basic Customs duty and Customs Cess as additional consideration. They failed to pay additional duty accruing from inclusion of the remaining portion of the Customs duty, namely, CVD, Cess and SAD in the assessable value in terms of Rule 6 of Central Excise (Valuation) Rules towards additional consideration. Thus, there was a short-payment of Rs.68,70,945/- for the period Sept.'07 to Apr.'08. A show-cause notice was issued raising the above demand along with interest and also for imposing penalty under Rule 25. After adjudication, the original authority observed that the appellants have correctly paid an amount of Rs.19,16,871/- towards differential duty on the additional consideration accruing to them and dropped the demand of Rs.68,70,945/-. However, Commissioner imposed a penalty of Rs.2,00,000/-. Being aggrieved by the imposition of penalty, even though, the appellants have correctly paid the differential duty, the appellants are now before the Tribunal.

2. On behalf of the appellants Shri V. Ravindran, learned counsel submitted that the appellants had paid differential duty along with interest by reassessing the value by adding the higher discount (BCD) offered to M/s. CGL raising supplementary invoices even before issuance of the show-cause notice. The Commissioner even though accepted that the differential duty paid by the appellants were correct and dropped the demand of Rs.68,70,945/- raised in the show-cause notice has proceeded to impose penalty of Rs.2,00,000/-. That when the proceedings in the show-cause notice has been dropped, the penalty would not survive and pleaded that the same may be set aside.

3. Learned Authorised Representative Shri S. Govindarajan reiterates the findings in the impugned order.

4. Heard both sides and perused the records.

5. It is indeed correct that Commissioner has found that appellants have paid correctly differential duty of Rs.19,616,871/- and dropped the demand raised in the show-cause notice. Hence, the imposition of penalty of Rs.2,00,000/- is unwarranted and requires to be set aside. Ordered accordingly.

6. In the result, the impugned order is modified to the extent of setting aside the penalty. Appeal is allowed with consequential reliefs, if any.

(Operative portion of the order pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
21-08-2016

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकारी / (CESTAT)
चेन्नै / CHENNAI