IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No.40369 of 2015

(Arising out of Order in Appeal No. 6/2015 dated 6.1.2015 passed by the Commissioner of Central Excise (Appeals – I), Coimbatore at Madurai)

M/s. Aruna Alloy Steels Pvt. Ltd. **Appellant**
Unit 3, Narasingampatti
Madurai – 625 112.

Vs.

Commissioner of GST & Central Excise **Respondent**
Lal Bahadur Shastri Marg
C.R. Buildings, Bibikulam
Madurai – 625 002.

APPEARANCE:

Shri M. Kannan, Advocate for the Appellant
Shri Anoop Singh, Authorized Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No.40763/2024

Date of Hearing : 10.05.2024
Date of Decision: 28.06.2024

The present appeal is filed by the appellant M/s. Aruna Alloy Steels Pvt. Ltd. against Order in Appeal No. 6/2015 dated 6.1.2015 passed by the Commissioner of Central Excise (Appeals), Madurai. (impugned order)

2. Brief facts of the case are that the appellant was engaged in the manufacture of MS/SS castings falling under Chapter 73 of CETA, 1985. They were availing credit on inputs, capital goods and input services and utilized the same towards payment of duty. They cleared their finished goods for export both on payment of duty as well as without payment of duty. For the goods cleared for export without

payment of duty, the appellants were required to furnish a Letter of Undertaking (LUT) to the jurisdictional Deputy / Assistant Commissioner of Central Excise in terms of Notification No. 42/2001-CE (NT) dated 26.6.2001. The appellants had filed a LUT with the Assistant Commissioner of Central Excise for the period covering from 18.8.2011 to 17.8.2012 and the LUT was assigned with Sl. No. 29/2011. The Central Excise officers on verification of the records of the appellants have found that from 18.8.2012 to 23.9.2012, the appellants failed to furnish / renew LUT, but cleared goods for export without payment of duty in contravention of the conditions laid down in Notification No. 42/2001-CE(NT) dated 26.6.2001. Therefore, a Show Cause Notice dated 30.8.2013 was issued to the appellant demanding duty not paid for the goods exported without valid LUT for the period from 18.8.2012 to 23.9.2012 along with interest. After due process of law, the original authority confirmed the demand along with interest and imposed equal penalty under sec. 11AC of the Central Excise Act, 1944. Aggrieved by the original authority's order, the appellant filed appeal before the Commissioner (Appeals), Madurai and the appellate Commissioner vide the impugned order upheld the same. Hence this appeal.

3. I have heard learned counsel Shri M. Kannan for the appellant and Shri Anoop Singh, learned Joint Commissioner (AR) for the respondent.

3.1 The learned counsel for the appellant submitted that there is no allegation of non-export of goods or diversion of goods in the show cause notice. The ARE-1s, invoices, ER-1 returns and other connected documents prove that the export was made. Further Notification No.

42/2001-CE(NT) dated 26.06.2001 does not state that the LUT has to be renewed every twelve months. The notification says that "*the manufacturer-exporter may furnish a letter of undertaking in the form specified in Annexure II in lieu of a bond".* He stated that at para 5 of the Order-in-Original, the details of export clearance was recorded and the same is reproduced below;

> *"5. Hence, the details of export clearance made during the period from 18.08.2021 to 23.09.2012 were called for from the assessee vide letter O.C.No.2542/2012 dated 25.09.2012 of the Superintendent of Central Excise, Melur Range. On verification of ARE-1s issued for the month of August 2012 and September 2012, it was observed that the assessee have cleared the good for export without payment of duty under the following ARE-1s citing the LTU Sl. No.29/2011 dated 11.08.2011 which was not in force as on date."*

Thus, once the goods are exported out of India and proof of export is on record, the role of Bond/LUT is complete and there is no loss of revenue to the Government exchequer. He stated that non-filing of extension of Letter of undertaking is a procedural lapse and hence substantive benefit of export cannot be denied and there could be no demand. Further, there is no allegation of suppression of fact or mis-statement with intention to evade duty in the SCN and hence there could be no mandatory penalty under section 11AC of the Central Excise Act, 1944. He prayed that the Tribunal be pleased to set aside the impugned order and allow the appeal with consequential relief.

3.2 The learned AR reiterated the findings in the OIO and the impugned order and stated that the proof of export had still not been accepted and are not beyond doubt/ suspicion. The ARE-I was also not submitted in time. He prayed that the appeal may be rejected.

4. I have heard the rival parties and perused the records. I find that the SCN has not questioned the actual export of the goods but only the non-submission of the LUT for the relevant period. Post the export, certain documents are stated to have not been furnished by the appellant for verification as per the Order in Original. I find that the charge of non-submission of documents was not an allegation mentioned in the SCN and the Ld. Original Authority and the Ld. Commissioner Appeals cannot travel beyond the allegations made out in the SCN and improve their case. As laid down by the Constitution Bench judgment of the Apex Court in **Sardar Amarjit Singh Kalra (Dead) by Lrs. v. Pramod Gupta (Smt) (Dead) by Lrs. & Anr.** [(2003) 3 SCC 272] ;

> "26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice……."

5. Once the fact of the Export of the goods was not questioned, the confirming of demand along with interest and imposing an equal penalty under sec. 11AC of the Central Excise Act, 1944, for a procedural lapse was too harsh and not warranted.

6. The Hon'ble supreme Court, in **Hindustan Steel Ltd. vs. state of Orissa** case reported in 1978 ELT (J 159) has held in para 7 that;

> "Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform statutory obligation is a matter of discretion of the authority to be exercised judicially and on consideration of all the relevant circumstances."

In the circumstance I feel that the ends of justice will be served by setting aside the fine and penalties imposed by the impugned order in terms of the Hon'ble Supreme Court's judgment cited above.

7. In the light of the discussions the impugned order is set aside. The appellant is eligible for consequential relief, if any as per law. The appeal is disposed of accordingly.

(Pronounced in open court on 28.06.2024)

(**M. AJIT KUMAR**)
Member (Technical)

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