IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Excise Appeal No.E/50031/2017 [SM]

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-242-16-17 dated 12/17.08.2016 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Bhopal]

M/s. Kanha Aluminium (P) Ltd. …Appellant

Vs.

C.C.E., Indore … Respondent

Present for the Appellant : Mr. Manish Saharan, Advocate
Present for the Respondent: Mr.G.R. Singh, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 21/06/2017

FINAL ORDER NO. _54400/2017_

PER: S.K. MOHANTY

Confirming of duty demand under Rule 8 (3A) of the Central Excise Rules, 2002 is the subject matter of present dispute.

2. Brief facts of the case are that during the month of June, 2012, against the duty liability of Rs.4,93,721/-, the appellant had paid Rs. 93,721/- from the PLA/ cenvat account and the balance amount of Rs.4,00,000/- was deposited through PLA during the period July to August, 2012. Since the duty amount was not deposited within the stipulated time, the Department

initiated proceedings and confirmed the adjudged demand against the appellant.

3. The ld. Advocate appearing for the appellant submits that an amount of Rs.4,00,000/- towards tax due for June, 2012 was paid by the appellant during the period July to August 2012 through PLA. Further, for the period July 2012 to October 2012, an amount of Rs.11,80,955/- was also paid from the PLA. Thus, he submits that since the entire amount of duty was paid alongwith interest, proceedings cannot be initiated for confirmation of demand under Rule 8 (3A) ibid read with Section 11A of the Central Excise Act, 1944. In this context, the ld. Advocate has relied on the decision of the Tribunal in the case of GEI Industrial Systems Ltd. vs. C.C.E., Bhopal – 2017 (347) E.L.T. 289 (Tri.-Del.). The ld. Advocate also submits that since the amount of duty required to be paid had been paid in excess, such excess amount should be eligible for refund.

4. On the other hand, the ld. D.R. appearing for the respondent reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. The fact is not under dispute that the entire amount of duty during the defaulted period was paid by the appellant from its PLA account, which is evident from adjudication order

dated 30.05.2014, wherein payment of such amount has been appropriated against the confirmed demand. Thus, it is evident that the appellant had paid the duty during the relevant period both from PLA as well as from the cenvat account. Since cenvat credit in the present case was utilized for discharging of duty liability, the same should be considered as proper compliance under Rule 8 (3A) ibid in view of the judgement of Hon'ble Gujrat High Court in the case of Insur Global Ltd. - 2012 (310) E.L.T. 833 (Guj.).

7. Therefore, the present adjudicated demand confirmed against the appellant is not sustainable. Since the appellant claimed that excess amount in respect of tax liability has been paid by it, I am of the view that the said aspect is required to be verified/ confirmed by the adjudicating authority. Thus, for quantification of the excess duty and interest amount, the matter is remanded to the original authority, who shall quantify the actual duty amount paid by the appellant vis-a-vis the amount payable under the statute and accordingly, should pass appropriate orders. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

8. The appeal is disposed of in above terms.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita