IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 59460 of 2013

[Arising out of Order-in-Original No. 22/2013 dated 29.05.2013 passed by the Commissioner of Central Excise (Appeals), Indore]

M/s. PEB Steel Lloyd (India) Ltd.. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Indore

Appearance:

Shri Amit Jain, Advocate for the Appellants
Shri R K Mishra, DR for the Respondent

<u>CORAM</u>:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing : 05.06.2017
Date of Decision : 03.07.2017

FINAL ORDER NO. 54462/2017

Per: V. Padmanabhan:

The appeal is against the order in original No. 22/2013 dated 29.5.2013. The appellant is manufacturing pre-fabricated structurals and flat products of steel. During the course of Audit of appellants records covering the period 2007-2008 and 2009-2010, the department noticed certain irregularities and upon receipt of audit memos, all the disputed amounts were paid by the appellants along with interest. But, the department proceeded to issue show cause notice dated 30.1.12 and, vide the impugned order, confirmed the demands along with interest. Penalty under section 11AC equal to 50% of the confirmed demands were also imposed. Aggrieved by the said order, the present appeal has been filed.

2. With the above background, we heard Shri Amit Jain, learned advocate for the appellant as well as Shri R K Mishra, learned DR for the revenue.

3. The first issue is regarding demand for differential duty in respect of goods manufactured by the appellants for M/s. Lloyd Insulations (India) Ltd. making use of free of cost material supplied by M/s. Lloyd Insulations as well as other materials procured by the appellant. The goods were cleared on payment of duty on the value of material used by the appellant. The department was of the view that duty is required to be paid by including the value of material supplied by M/s. Lloyd Insulations. Even though such differential duty along with interest was already paid, in the present appeal, the appellant has argued that since the work was carried out for M/s. Lloyd Insulations as a job work, and since no Cenvat credit was availed by them on the

material supplied by M/s. Lloyd Insulations, there is no need to pay differential duty. They also relied on several case laws and in particular the case of ***M/s. International Auto Ltd. vs. CCE, Bihar [2005 (183) ELT 239 (SC).]***

4. Learned DR however submits that the appellant has never challenged the payment of differential duty before the lower authorities even though the duty was paid ‘under protest’. The protest itself has subsequently been withdrawn by them vide their letter dated 23.5.2013.

5. We have gone through case laws of ***M/s. International Auto Ltd.*** (supra) relied upon by the appellant. The decision has been rendered by the Apex Court in similar facts and will be applicable to the facts of the present case. However, we find that the appellant has not raised the issue before the lower authorities and have already paid the differential duty along with interest. In the circumstances, we are of the view that there is no necessity to disturb such differential duty already paid since the recipient of the goods have already availed the Cenvat credit of the same. However, in the absence of any charge of suppression against the appellant, we find no justification in imposition of penalty which is set aside.

6. Cenvat credit amounting to Rs.33,384/- has been objected to by the department for the reason that these have been availed on the basis of invoices which were not in the appellant’s name. Certain amounts

have been held to be short paid, in respect of goods returned for remanufacturing. Certain amount is also said to be recoverable on cenvat credits taken twice by mistake. We note from the records that all the said amounts have been paid by the appellants along with interest. We find no reason to interfere with the same . However, penalties are set aside since we find no mensrea on the part of the appellant.

(Pronounced in the open Court on 03.07.2017)

(V. Padmanabhan)	**(Justice (Dr.) Satish Chandra)**
Member (Technical)	**President**

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