IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.E/344/2008

(Arising out of Order-in-Original No.95/MP/Commr/08 dated 31.03.2008 passed by the Commissioner of Central Excise, Ranchi)

Commissioner of Central Excise, Ranchi
Applicant (s)/Appellant (s)

Vs.

SAIL Respondent (s)

Appearance:
Shri A.Roy, Suptd.(AR) for the Appellant (s)
Shri Ravi Raghavan, Advocate, Shri D.Sen, Advocate and Shri S.Kharkia, CA for the Respondent (s)

CORAM:
Hon'ble SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision:- 03.05.2018

ORDER NO.FO/76016/2018

Per Shri V.Padmanabhan

1. The present appeal has been filed against the Order-in-Original No.95/MP/Commr/08 dated 31.03.2008.

2. This is third round of litigation before the Tribunal and is pertaining to the period 1992-1993 to 1996-1997. The respondent carried out stock verification at their various depots in different parts of the country and recorded certain excess as well as shortages in their books. Subsequently, department also carried out verification only on allegation of excess stock found. In respect of the excess found in various depots, out of the clearances made by the respondent i.e Bokaro Steel Plant, the differential duty was demanded and the excess stok was ordered for confiscation and allowed for redemption on payment of redemption fine. In the last round of

litigation before the Tribunal, the case was remanded with certain directions and after complying with the directions of the Tribunal the present impugned order has been passed in which;

1) duty demand of Rs.1,97,99,605/- on 13668.790 MT of the final products found excess in the stock yards during annual stock verification during the period from 1992-1993 to 1996-1997.

2) Imposed penalty of Rs.20,00,000/- under rule 173Q of the Central Excise Rules, 1944.

3) ordered for confiscation of 1531.360 MT of HR Sheet, plate & coil valued at Rs.2,46,93,417/- with option to redeem the same on payment of redemption fine of Rs.5,00,000/-.

4) Ordered for charging of interest under Section 11AA of the Central Excise Act, 1944.

In compliance to the impugned order the respondent paid the differential duty demanded alongwith redemption fine. Aggrieved by the same Revenue has filed the present appeal mainly on the following points:

a) The adjudicating authority has not imposed penalty under Section 11AC of the Act.
b) No demand of interest has been made under Section 11 AA.
c) Revenue sought to enhance redemption fine on account of confiscation of the goods.

3. With this background we heard both sides and perused the appeal record.

4. The various integrated steel plants of M/s. SAIL as well as others were directed by the Government of India to carry out stock verification at their respective depots and were directed to make payment in respect of excess stock found there and in compliance to the Government instruction respondent also being integrated steel plant, undertook such exercise which has resulted in the present appeal. It is also pertinent to record that in Rastriya Ispat Nigam Ltd. vs. Commissioner of Central Excise, Visakhapatnam [2005(191) ELT 1072 (Tri.-Bang.) where in it was held that the Circular No.486/52/99-CX dated 23.09.1999 was retrospective in nature by which the integrated steel plants were required to only make payment of duty demand but there is no justification of imposition of any penalty.

5. In the circumstances of the present case we note that the excess stocks have been adjusted against the shortages and the Adjudicating Authority has finally arrived at figure Rs.1.97 crores duty demand. The same has also been paid by the respondent in compliance to circular (supra). Consequently, we find that there is no justification for imposition of penalty under Section 11AC in view of the Board Circular referred above. In any case the respondent has not challenged the penalty of Rs.20.00 lakh imposed by the adjudicating authority, which also stand paid by them.

6. Regarding demand of interest under Section 11AB which Revenue seeks to impose in the present appeal grounds, it is to record that the section 11AB was introduced in the statute book on 28.09.1996 and the Commissioner has recorded in the impugned order that period of the present demand pertains to the period prior to such date. Consequently

the adjudicating authority has imposed payment of interest under Section 11AA. However, we note that the duty demand has been paid by the respondent within a period of three months from the date of passing of the order and hence we find no justification to insist on payment of interest under Section 11AB.

7. Revenue has also sought to enhance the amount of redemption fine and penalty imposed by the adjudicating authority. We note that the as per show cause notice the duty demand was amounting to Rs.31,31,13,259/- while the demand as per the impugned order is Rs.1,97,99,605/-. The adjudicating authority has also adjusted the excess and shortages which resulted in reduction of the overall demand.

8. Consequently, we find no reason to interfere with the redemption fine and penalty imposed by the adjudicating authority. Hence, the redemption fine and penalty imposed by the adjudicating authority is sustained.

9. In the result, the appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the Open Court)

S/d.

(Justice Dr. Satish Chandra)
President

S/d.

(V.Padmanabhan)
MEMBER (Technical)

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