IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Ex.Appeal No.331/09

(Arising out of Order-in-Original No.18/Denovo/Commissioner/09 dated 23.03.2009 passed by Commissioner of Central Excise & S.Tax, Jamshedpur)

M/s Tata Steel Ltd.

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise, Jsr.

Respondent (s)

Appearance:

Shri D. K. Dhar, Adv. for the Appellant (s)
Shri D. Haldar, Asstt. Commr. (AR) for the Revenue (s)

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

Date of Hearing : 06.07.2018
Date of Decision : 06.07.2018

ORDER NO.F/76413/2018

Per Shri Bijay Kumar :

Heard both sides and perused the appeal records.

2. The appellant has filed this appeal against the impugned order of the ld.Adjudicating Authority, pursuant to the CESTAT Order No.A-513/Kol/08 dated 29.04.2008. In the order, the CESTAT set aside the earlier adjudication order and remanded the matter for fresh adjudication considering the facts that the appellant has paid the duty prior to issuance of show-cause notice and paid interest after issuance of show-cause notice. The CESTAT in its order has specifically held in respect of ingredients of Section 11AC and their application, in the

instant case, may be examined and therefore, only penalty aspect could be considered on merit in the present proceedings agaisnt the appellant. However, after going through the impugned order, we find that the ld.Adjudicating Authority has merely reproduced the findings of the Order-in-Original and which was set aside by CESTAT and directed for issue of fresh order in the denovo proceedings. In this regard, the relevant para of the impugned order is reproduced below :

> *" 4.8 In respect of submission made by TSL as mentioned in Para 3.9. to 3.12, I find that imposition of penalty cannot be ruled out in the case in light of observation made by Hon'ble CESTAT in the order dated 29.04.2008 and of decision made by Hon'ble Supreme Court in the case of Union of India Vs Dharmendra Textiles processor cited in 2008-TIOL-192-SC-CX-LB."*

3. Considering the impugned order, we are of the view that ld.Adjudicating Authority has not examined the issue of penalty vis-à-vis ingredients of Section 11AC of Central Excise Act, 1944 on which the penalty was proposed to be invoked. This was not in compliance of remand order of CESTAT. Since this is second round of litigation before CESTAT, we feel it appropriate to set aside the impugned order and allow the appeal

(Dictated and pronounced in the open Court.)

Sd/	Sd/
(P. K. CHOWDHARY)	**(BIJAY KUMAR)**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

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