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

Appeal No. E/256/2010

(Arising out of Order-in-Original No. 109/COMMR./BOL/09 dated 25.11.2009 passed by the Commissioner of Central Excise, Bolpur.)

M/s. Steel Authority of India Ltd.

Appellant (s)

Vs.

Commissioner of Central Excise, Bolpur

Respondent (S)

Appearance:
Dr. S. Chakrabarty, Sr. Adv. & Shri Abhijit Biswas, Adv. for the Appellant (s)
Shri A. Roy, Suptd. (A. R.) for the Revenue

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing: -17.09.2018
Order No. FO/77178/2018

PER SHRI P. K. CHOUDHARY

1. The instant appeal has been preferred by Steel Authority of India Limited, Durgapur Steel Plant against the adjudication order bearing Order (Original) No. 109/Commr/BOL/09 dated 25.11.2009 passed by the Commissioner, Central Excise, Bolpur Commissionerate, Bolpur.

2. By the said order the Commissioner has confirmed a duty demand of Rs. 5,61,57,519/- against the appellant under Section 11A(2) of the Central Excise Act, 1944 along with interest and penalty of equivalent amount has also been imposed upon the appellant under Section 11AC of the Act. The Commissioner has held that the appellant had during the periods from December 2003 to March, 2008 and from March 2006 to March 2008, cleared 126103.58 MT and 65035.90 MT of Concast Billets

classifiable under Chapter Heading 72061090 and 72079020 of the Central Excise Tariff Act to its sister units, Alloys Steel Plant, Durgapur and IISCO Steel Plant, Burnpur, by undervaluation of the said goods without ascertaining the correct assessable value in terms of Cost Accounting Standard-4 ("CAS-4"), which has resulted in short payment of central excise duty amounting to Rs. 5,61,57,519/- and contravention of the provision of Section 4(1)(b) of the Central Excise Act read with Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Notification No. 60/2003-CE(NT) dated 05.08.2003 by the appellant.

3. Briefly stated the facts of the case are that Durgapur Steel Plant, the appellant, inter alia, cleared excisable goods, ingots and billets, manufactured by it to its adjacent sister unit, Alloys Steel Plant, Durgapur and Indian Iron and Steel Company (IISCO), Burnpur, for their use and further processing, on the basis of available cost of production as per CAS-4, derived after finalization of accounts duly audited upto the level of CAG. Pursuant to CERA audit objection regarding the manner of valuation of the said goods sent to its sister units by the appellant, a show cause notice was issued on 06.01.2009 resulting in the impugned order.

4. Heard both sides and perused the appeal records.

5. The Ld. Sr. Advocate appearing on behalf of the appellant, while contending that the cost of production determined by the appellant as per CAS-4 was correct and had been properly determined in accordance with the relevant provisions of Section 4 of the Act and the Valuation Rules, submitted that, in any event, the issue is revenue neutral since the alleged short paid duty involved was available to the appellant's sister

units as cenvat credit and hence on this ground itself , the impugned order and the demand confirmed are not sustainable.

6. On behalf of the Revenue the reasons and findings of the Commissioner in the adjudication order are reiterated.

7. We find that in the instant case there is no dispute that the subject goods were transferred by the appellants to its sister units. As such the duty amount demanded is available as credit in the sister units of the appellant under the Cenvat Credit Rules. Consequently this will lead to a revenue neutral situation. In such scenario there is no justification to demand duty, as held by the Tribunal in the cases of **Anglo-French Textiles Vs. CCE, 2018(360) ELT 1016(Tri-Chennai),** affirmed by the Hon'ble Supreme Court in the case of **Commissioner** Vs. **Anglo-French Textiles 2018(360) ELT A301(SC)** and **Commissioner of Central Excise Vs. Special Steel Limited, 2015(329) ELT 449(Tri-Mumbai),** affirmed by the Hon'ble Supreme Court in the case of **Commissioner of Central Excise Vs. Special Steel Limited, 2016(334) ELT A123(SC).**

8. By following the above decisions, we set aside the impugned order and the appeal filed by the appellant is allowed.

(Operative part of the order was pronounced in the open court.)

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

Pooja