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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.63/2008

(Arising out of Order-in-Original No.56-61/Commr./BOL/2007 dated 24.09.2007 passed by Commissioner of Central Excise, Bolpur.)

M/s. IISCO Limited (now M/s. SAIL, IISCO Steel Plant)
(Burnpuru Works, Burnpur, Dist.-Burdwan,
Pin-713325.)

...Appellant

VERSUS

Commissioner of Central Excise, Bolpur

.....Respondent

(Adjudication Cell, Sian, Bolpur, Birbhum,
West Bengal-731204.)

APPEARANCE

Shri H.Shukla, Advocate for the Appellant (s)
Shri D.Haldar, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI C.J.MATHEW, MEMBER(TECHNICAL)

FINAL ORDER NO. 77081/2019

DATE OF HEARING : 23 September 2019
DATE OF DECISION : 23 September 2019

P.K.CHOUDHARY :

Present Appeal has been filed by M/s.IISCO Ltd. (Now M/s.SAIL, IISCO Steel Plant) against the Order-in-Original No.56-61/Commr./BOL/2007 dated 24.09.2007 passed by Commissioner of Central Excise, Bolpur. Vide the impugned order, learned Commissioner had confirmed demand of Rs.5,75,602/- along with interest and equivalent penalty covering period from 01.03.1988 to 28.02.1989. It is the case of the department that Cast Steel, Ladle Cup cleared during the period under dispute is classifiable under CTH 8454 instead of CTH 7325 as claimed by the appellant assessee.

2. Learned Advocate appearing on behalf of the appellant company submitted that the appellant manufactured the impugned goods as castings of steel/cast articles of non-alloy steel, which was not further worked upon to give its essential characteristics and as per Circular No.1/87 dated 18.02.1987, unfinished and unmachined castings were classifiable under CTH 72/73. However, post 01.03.88, the Central Excise Tariff Act was aligned with HSN and thereafter the impugned goods came to be classified under CTH 8454.

3. It was submitted without going into merits of the matter that post this amendment, the Department came out with Circular No.32/89 dated 30.06.1989 wherein the scope of the amendment was clarified and it was stated that impugned goods would get covered under CTH 8454. It was submitted that the fact of manufacture of the impugned goods were known to the Department through the classification list dated 01.03.1988, gate pass etc. which were also submitted along with RT 12 returns. Thus, there was no suppression of facts by the assessee. It was also submitted that once the classification list is submitted to the Department, no suppression can be alleged, reliance in this regard, was placed on the decision of the Densons Pultretaknik vs. CCE [2003 (155) ELT 211 (SC)].

4. The learned Authorized Representative for the Respondent Revenue reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal records.

6. We find that the only argument on behalf of the Appellant is that the demand is barred by limitation. Hence, without going into the merits of the matter to decide correct classification we dispose the appeal only on the aspect of limitation. After hearing both sides and on going through the documents on record and the factual position, we find force in the arguments raised by the Appellant that the classification list provided by the Appellant was accepted by the department and therefore suppression cannot be alleged. We find that

the Hon'ble Supreme Court in the case of Densons Pultretaknik vs. CCE (supra) held as follows:-

> **"7.***Next question is - whether the Tribunal was justified in invoking first proviso to sub-section (1) of Section 11A. Prima facie, it is apparent that there was no justifiable reason for invoking larger period of limitation. There is no suppression on the part of the appellant-firm in mentioning the goods manufactured by it. The appellant claimed it on the ground that the goods manufactured by it were other articles of plastic. For the insulating fittings manufactured by it, the tariff entry was correctly stated. The concerned officers of the Department, as noted above, after verification approved the said classification list. This Court has repeatedly held that for invoking extended period of limitation under the said provision duty should not have been paid, short-levied or short-paid by suppression of fact or in contravention of any provision or rules but there should be wilful suppression. [Re : M/s. Easland Combines, Coimbatore v. The Collector of Central Excise, Coimbatore, C.A. No. 2693 of 2000 etc. decided on 13-1-2003]. By merely claiming it under heading 3926.90 it cannot be said that there was any wilful misstatement or suppression of fact. Hence, there was no justifiable ground for the Tribunal for invoking the first proviso to sub-section (1) of Section 11A of the Act."*

7. By respectfully following the aforesaid decision of the Hon'ble Supreme Court, we set aside the impugned order and allow the appeal.

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

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

SD/
(C.J.MATHEW)
MEMBER (TECHNICAL)

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