IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 118 of 2012

(Arising out of Order-in-Original No. 83/Commr/BOL/11 Dated 12.12.2011 passed by Commissioner of Central Excise, Bolpur.)

M/s. Pareshnath Re-Rolling Mills Ltd.
(3511- Part, Dr. B. C. Roy Avenue,
Durgapur, Dist.-Burdwan, Pin-713201)

Appellant

VERSUS

Commr. of CGST & CX, Bolpur Commissionerate
(Nanoor Chandidas Road, Sian, dist. Birbhum
W. B.-731204)

Respondent

APPERANCE :
None for the Appellant
Mr. S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75510/2023

Date of Hearing : 31 May 2023
Date of Decision : 31 May 2023

PER K. ANPAZHAKAN:

The brief facts of the case are that the Appellant has supplied M. S. Angles, Channels, Joists etc. to the SEZ developer namely M/s. Jindal Stainless Ltd., without payment of duty during the period July 2008 to December 2008. The Department considered these supplies as exempted supplies and demanded 10% of the value of the goods cleared to SEZ developer on the ground that the said clearance were not covered under Rule 6 (6) (1) of the Cenvat Credit Rules, 2004. Rule 6 (2) of the Cenvat Credit Rules stipulates that in case of manufacture of dutiable and exemptesd goods with common inputs on which CENVAT Credit has been availed, the manufacturer has to maintain separate accounts. If separate accounts are not maintained then as per Rule 6(3) of the said Rules, 10% of the value of the exempted goods needs to be paid. Accordingly, a Show Cause Notice was issued demanding duty of Rs.93,97,856 from the Appellant, under section 11 A(1) of the Central Excise Act read with Rule 6(3) of the Cenvat Credit Rules, 2004. The said demand was confirmed by the Commissioner vide Order-in-Original No 83/Commr/BOL/11 Dated 12/12/2011. Aggrieved against the impugned order the Appellant is before us.

2. In their submissions, the Appellant stated that Notification No.50/2008-CE(NT) dated 31.12.2008 eliminated the distinction between SEZ Unit and developer and the benefit of the Notification has been extended to SEZ developers retrospectively and hence the demand confirmed vide the impugned order is not sustainable. The Department considered that the benefit of Notification No. 50/2008-CE(NT) dated 31.12.2008 would not be applicable retrospectively for the period covered in the impugned order and hence the demand is sustainable.

3. Heard the Learned AR and perused the Appeal records.

4. We observe that as per Rule 30 of the SEZ Rules, 2006 a manufacturer can supply goods to SEZ Units without payment of duty. Subsequently, this benefit was extended to SEZ Developers also vide Notification No 50/2008-CE(NT) dated 31/12/2008. The question here is whether the benefit of the Notification would be applicable retrospectively for the earlier period covered in the impugned order. We find that the issue has been decided by Hon'ble High Court of Chhattisgarh in the case of Union of India Vs. Steel Authority of India Ltd.-2013 (297) E.L.T. 166 (Chhattisgarh), wherein it has held as under:-

> *(a)---*
>
> *(b) The amended rule is merely clarificatory, corrects an obvious mistake, removes discrimination between developers and units in special area zones. It merely clarifies or explains the existing law of*

providing non-imposition of excise duty on goods that are held to be export under the Special Area Zone Act;

(c) The substituted sub-rule 6(6)(i) is enforced from the date the 2004- Rules came into force.

5. We observe that the Hon'ble High Court of Chhattisgarh in the case of Steel Authority of India cited above has categorically held that the benefit of Notification No. 50/2008-CE(NT) would be applicable retrospectively. Relying on the above said decision of the Hon'ble Chhattisgarh High Court, we hold that the Appellants are eligible for the benefit of Notification No. 50/2008-CE(NT) for the period covered in the impugned order. Accordingly, the demand confirmed in the impugned order is not sustainable and liable to be set aside.

5. In view of the above discussion, we allow the appeal filed by the Appellant.

(Dictated and pronounced in the open court.)

Sd/-

(Ashok Jindal)
(Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pooja