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

REGIONAL BENCH – COURT NO.1

Excise Appeal No.283 of 2008
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.35/JSR/2008 dated 12.03.2008 passed by Commissioner of Central Excise & Service Tax (Appeals), Ranchi)

M/s Daya Concretes Limited
Dhalbhumgarh, East Singhbhum, Jharkhand

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Ranchi
605, 6th Floor, Mahabir Tower, Main Road, Ranchi-834001

Respondent

APPERANCE :

None for the Appellant
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO…76259/2023

DATE OF HEARING : 26 .07.2023
DATE OF DECISION : 26 .07.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case is that the appellant is engaged in the manufacture and clearance of PSC Sleepers and paying duty. The appellant is a Public Sector Undertaking for Indian Railways and as per contract price, the goods are removing at the contract price updated by RBI Index. The contract price with Railways includes price escalation/de-escalation clause for the raw materials for procured from approved suppliers of railways used in the manufacture of finished goods updated by every six months. The appellant has raised

supplementary invoices updating RBI Index in case of net escalation and de-escalation of the price of raw materials. The appellant was paying duty on the basis of supplementary invoices issued periodically. There is no dispute to that.

2.1 The appellant did not pay the interest for the intervening period. Therefore, a show-cause notice was issued to the appellant for demand of interest by invoking extended period of limitation.

2.2 The matter was adjudicated. The demand of interest was confirmed against the appellant.

2.3 Against the said order, the appellant is before us.

3. None appeared on behalf of the appellant.

4. On the other hand, the ld.A.R. for the Revenue, supports the impugned order.

5. On perusal of records, we find that the appellant is paying duty in terms of supplementary invoices and filed their periodically ER-1 Return showing payment of duty on the strength of supplementary invoices. These facts are not in dispute and the period invoiced in this matter is from 01.07.2000 to 31.03.2005, whereas the show-cause notice has been issued to them on 17.02.2006.

6. In that circumstances, it is to be seen that the demand of extended period of limitation is sustainable or not ?

7. We find that the similar issue came up earlier before this Tribunal in the case of M/s SAIL Alloys Steel Plant Vs. Commissioner of Central Excise, Bolpur in Excise Appeal No.195 of 2011 wherein this Tribunal vide Final Order No.75775/2023 dated 19.06.2023, has held as under :

> *"6. Considering the fact that payment of duty on the strength of supplementary invoices was well within the knowledge of the department at the time of filing of ER-1 return showing payment of duty on the strength of supplementary invoices, in that circumstances, we hold that extended period of limitation is not invocable in the facts and circumstances of this case. Therefore, the demand of interest beyond the normal period of limitation is set aside.*
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> *7. We further take note of the fact that the demand of interest within the period of limitation, the appellant has already paid, therefore, nothing survives. Hence, the demand of payment of interest within the period of limitation is confirmed".*

8. As the facts are not in dispute that the payment of duty on the strength of supplementary invoices was well in the knowledge of the Department at the time of filing of ER-1 Returns showing payment of duty on the strength of supplementary invoices.

9. In that circumstances, we hold that the extended period of limitation is not invokable in this case. Therefore, the demand of interest beyond the normal period of limitation is set aside. The demand of interest within the period of limitation is confirmed.

10. In these terms, the appeal is disposed off.

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

Sd/-

(Ashok Jindal)
Member (Judicial)

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

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