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

REGIONAL BENCH – COURT NO.1

Excise Appeal No.26 of 2011
Cross Objection No.37 of 2011
(On behalf of Appellant)

(Arising out of Order-in-Original No.06/Commr./CE/Kol.IV/2010 dated 11.10.2010 passed by Commissioner of Central Excise, Kolkata IV)

Commissioner of Central Excise, Kolkata IV
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Appellant

VERSUS

M/s Orion Metal Private Limeited
NH-2, Delhi Road, Baidyabati, Dist.-Hooghly, West Bengal

Respondent

APPERANCE :

Shri P.K.Ghosh, Authorised Representative for the Appellant
None for the Respondent

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

FINAL ORDER NO...76407/2023

DATE OF HEARING : 09 .08.2023
DATE OF DECISION : 09 .08.2023

Per Ashok Jindal :

The Revenue is in appeal against the impugned order wherein the ld.Adjudicating Authority has dropped the proceedings against the respondent.

2. The respondent has also filed the Cross Objection.

3. The facts of the case are that the respondent is a manufacturer of M.S.Ingot during the period from 2005-06 to 2009-10. The respondent declared monthwise production in ER-1 Returns. The monthwise production was compared with the electricity consumption data for the relevant period and as per technical opinion report of IIT, Kanpur, it

was approved by the Nucleus Group Study of CBEC, which suggested a electricity consumption range between 555 KWH to 1026 KWH per MT of production of Ingots in induction furnace depending upon the thermal/electrical efficiency, nature of raw materials etc.. By considering a higher consumption of 1000 KWH per MT, they declared the production, which was found to be considerably understated.

4. In these set of facts, it was alleged that the appellant has clandestinely manufactured and cleared the goods without payment of duty and a show-cause notice was issued to the respondent on 21.05.2010 by invoking extended period of limitation.

5. The Adjudicating Authority after going through the facts and judicial pronouncements of the Tribunal, the proceedings were initiated against the respondent.

6. Against the said order, the Revenue is before us.

7. Heard the ld.A.R. for the Revenue.

8. We find that on similar facts, this Tribunal in the case of R.A.Castings Private Limited Vs. CCE reported in 2009 (237) ELT 674 (Tri.Del.), has held that on technical data for consumption of electricity by the report of IIT, Kanpur, cannot be relied upon to determine the electricity of consumption per MT by the ingot manufacturer.

9. In that circumstances, the ld.Adjudicating Authority dropped the demand and the said order of this Tribunal has been affirmed by the Hon'ble Apex Court.

10. In that circumstances, we do not find any infirmity in the impugned order dropping the proceedings against the respondent. Therefore, the appeal filed by the Revenue deserves no merit.

Accordingly, the same is dismissed and the Cross Objection filed by the respondent is also disposed off in the above terms.

(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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