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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.402 of 2011

(Arising out of Order-in-Appeal No.19/CE/BBSR-I/2011 dated 18.02.2011 passed by Commissioner(Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.)

M/s. Vedanta Aluminium Limited
(Lanjigarh, Pin-766027, District Kalahandi, Odisha.)

...Appellant

VERSUS

Commissioner of Central Excise, Bhubaneswar-I

.....Respondent

(Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha.)

APPEARANCE

Ms. Udita Saraf, Advocate for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77426/2023

DATE OF HEARING : 31 October 2023
DATE OF DECISION : 31 October 2023

Per : R. MURALIDHAR :

The Appellants are clearing their goods to BALCO by adopting transaction value for the purpose of calculation of excise duty. The department took the view that the assessable value has to be calculated as per Rule 8 of the Valuation Rules, 2000. A Show Cause Notice was issued. After due process, the demands were confirmed. The Appellant paid the Excise Duty demand along with interest of Rs.4,72,23,976/-, since they were able to claim the Cenvat Credit for the Excise Duty paid. As BALCO was their related party, the appellants have filed refund claim for Rs.4,72,23,976/- paid as interest. The adjudicating authority has rejected their refund claim. Being aggrieved, they have filed appeal before the Commissioner(Appeals), who has dismissed their Appeal. In the meanwhile, being aggrieved by the penalty imposed in the Order-in-Original, the Appellant had approached the Settlement Commission. The Settlement Commission vide their Order dated 29.09.2011 appropriated the Excise Duty and interest paid and limited the penalty to Rs.4.00 Crores. Being aggrieved, the Appellant had approached the Hon'ble High Court and subsequently Supreme Court for waiver of this penalty amount. Both these Courts have rejected their prayer. The present appeal is on account of their refund claim of Rs.4,72,23,976/-.

2. After going through the records of hearing both the sides, we find that the amount claimed as refund has already been subsumed in the order passed by the Settlement Commission vide their order dated 23.09.2011. It is also on record that the appellant has not agitated the interest amount appropriated by the Settlement Commission before the High Court and Supreme Court. They had agitated only the penalty amounts before these Courts. In such a case, the present Appeal seeking refund of Rs.4,72,23,976/- does not survive. The Appeal has become infructuous in view of their accepting the Settlement Order affirmed by the orders of High Court and Supreme Court on this issue.

3. Accordingly, we dismiss the Appeal as infructuous.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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