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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 103 of 2011

(Arising out of Order-in-Appeal No. 35/Kol-IV/2010 dated 18.11.2010 passed by the Commissioner of Central Excise (Appeals-IV), 180, Santipally, Rajdanga Main Road, 6th Floor, Kolkata – 700 107)

M/s. Bharat Roll Industries (Pvt.) Limited : Appellant
Unit-II, Vill: Jagannathpur, P.O. Bamunari,
Dist: Hooghly, West Bengal

VERSUS

Commissioner of Central Excise : Respondent
Kolkata-IV Commissionerate,
M.S. Building, Custom House, 15/1, Strand Road,
Kolkata – 700 001

AND

Excise Appeal No. 114 of 2012

(Arising out of Order-in-Appeal No. 87/Kol-IV/2011 dated 21.10.2011 passed by the Commissioner of Central Excise (Appeals-IV), 180, Santipally, Rajdanga Main Road, 6th Floor, Kolkata – 700 107)

M/s. Bharat Roll Industries (Pvt.) Limited : Appellant
Unit-II,Vill: Jagannathpur, P.O. Bamunari,
Dist: Hooghly, West Bengal

VERSUS

Commissioner of Central Excise : Respondent
Kolkata-IV Commissionerate,
M.S. Building, Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Ananda Sen, Advocate for the Appellant
Assisted by Smt. Ankita Mitra, Advocate

Shri K. Chowdhury, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75403-75404 / 2024

DATE OF HEARING / DECISION:04.03.2024

Order : [Per Shri Ashok Jindal]

These appeals are relisted on the ground that while passing the earlier Order, this Tribunal held that on merit the appellants have no case, but at the time of passing the said Order, this Tribunal did not consider the issue of limitation. Therefore, an application for rectification of mistake was filed by the appellant and the same was allowed and the issue on limitation shall be considered by the Tribunal.

2. In fact, there are two appeals: -

i) Appeal No. E/103/2011 wherein the Show Cause Notice has been issued on 28.03.2006 for the period 2001-02 and 2002-03. The appellant contends that they are not disputing the payment of duty, which they have already paid. They are only seeking immunity from interest and penalty, which has been imposed on them by invoking the extended period of limitation. It is their contention that as Unit No. I is entitled to take CENVAT Credit of duty paid by Unit No. II, therefore, it is a revenue neutral situation; thus in view of the decision of the Hon'ble Apex Court in the case of *M/s. Nirlon Ltd. v. Commissioner of Central Excise, Mumbai [2015 (320)) E.L.T. 22 (S.C.)],* the extended period of limitation cannot be invoked.

ii) Appeal No. E/114/2012 wherein it is their contention that in the impugned order, the Ld. Commissioner (Appeals) has already taken a view that there is a violation of Rule

8 of the Valuation Rules by the appellant, but there was no intent to evade payment of duty. It is their contention that when the Ld. Commissioner (Appeals) has already held that there is no intent to evade payment of duty, the extended period of limitation is not invokable. Therefore, it is prayed that the Show Cause Notice issued to them on 26.12.2006 for the period 2003-04 to 2004-05, is barred by limitation and no interest or penalty is imposable on the appellant. To support their contention, reliance is placed on the decision of this Tribunal in the case of *M/s. Verve Consulting Pvt. Ltd. v. Commissioner of Central Excise and Service Tax, Bhubaneswar-I [(2023) 9 Centax 413 (Tri. – Cal)].*

3. On the other hand, the Ld. Authorized Representative appearing on behalf of the respondent supported the impugned orders.

4. Heard the parties and considered their submissions.

Appeal No. E/103/2011:

5. We find that it is correct that whatever duty was paid by Unit-II is entitled as CENVAT Credit by Unit-I of the appellant themselves. In these circumstances, it is a situation of revenue neutrality. Therefore, as held by the Hon'ble Apex Court in *M/s. Nirlon Ltd. (supra)*, we hold that the extended period of limitation is not invokable. Consequently, the demand of interest and penalty against the appellant are not sustainable.

5.1 In view of this, we set aside the impugned order *qua* demanding interest and penalty from the appellant.

Appeal No. E/114/2012:

6. In this case, we find that the Ld. Commissioner (Appeals) in the impugned order itself has recorded as under: -

> *"6. ….*
>
> *… Since, in this case rule 8 of the Valuation Rules, 2000 had not been followed therefore clearly there was non-compliance and short payment of duty at the time of removal of the semi-finished goods though the intent to evade payment of duty does not exist."*

6.1 As the Ld. Commissioner (Appeals) himself holds that there was no *mala fide* intent on the part of the appellant, in these circumstances, we hold that the extended period of limitation is not invokable in this case also. Consequently, the demand of interest and penalty against the appellant are not sustainable. Therefore, the impugned order *qua* demanding interest and penalty from the appellant is set aside.

7. In the result, the appeals are disposed of in the above terms, with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-	Sd/-
(K. ANPAZHAKAN)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Sdd