

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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 896 of 2011

(Arising out of Order-in-Appeal No. 84/KOL-II/2011 dated 22.07.2011 passed by the Commissioner of Central Excise (Appeals), Kolkata-II, Kendriya Utpad Shulk Bhawan, 180, Shantipally, R.B. Connector, Rajdanga Main Road, 6th Floor, Kolkata – 700 107)

M/s. Bengal Hammer Industries (P) Ltd. (Unit-II) : Appellant

58/1, Malipanchghara Street,
Ghusuri, Howrah – 711 107

VERSUS

Commissioner of Central Excise

: Respondent

Kolkata-II Commissionerate,
15/1, Strand Road, 2nd Floor, Kolkata – 700 001

APPEARANCE:

Shri N.K. Chowdhury, Advocate for the Appellant

Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 75754 / 2024

DATE OF HEARING: 22.04.2024

DATE OF DECISION: 24.04.2024

Order : [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Appeal No. 84/KOL-II/2011 dated 22.07.2011 passed by the Ld. Commissioner of Central Excise (Appeals), Kolkata-II wherein he has upheld the order passed by the Ld. Addl. Commissioner of Central Excise, Kolkata-II. In the impugned order, the demand of duty of Rs.5,08,173/- has been ordered to be recovered along with interest under Rule 96ZP (3) of the erstwhile Central Excise Rules, 1944. Penalty equal to the amount of duty has also been imposed under Rule 96ZP (3) of the Rules.

2. The facts of the case are that the appellant has been working under the Compounded Levy Scheme under Section 3A of the Central Excise Act, 1944 read with Rule 96ZP of the Rules. They opted to pay duty under Rule 96ZP (3) in terms of which the Ld. Commissioner has fixed Central Excise Duty of Rs.5,08,173/- (Rupees Five Lakh Eight Thousand One Hundred and Seventy Three only) per month. The present dispute is related to non-payment of duty fixed for the month of March 2000.

3. The appellant submits that their factory was closed for the entire month of March 2000 and thus they did not pay the duty as fixed under Rule 96ZP (3) of the Rules. It is also submitted by the appellant that in terms of proviso to sub-section (3) to Section 3A of the Central Excise Act, 1944, no duty is payable if the factory is closed for seven days or more; since their factory was closed for the entire month, the appellant submits that no duty is payable by them.

3.1. They further submit that the demand has been made by invoking the proviso to Section 11A of the Central Excise Act, 1944 alleging suppression of fact with intention to evade payment of duty; the Show Cause Notice was issued on scrutiny of their RT-12 return for the month of March 2000 and non-payment of duty for the month of March 2000 has been reflected in the RT-12 return filed by them; they have not paid duty for the month of March 2000 in terms of the provisions of Section 3A read with Rule 96ZP. Hence, it is their contention that the extended period of limitation is not invocable in this case, as they have not suppressed any information from the Department.

3.2. The appellant submits that the demand for the month of March 2000 has been raised vide Show

Cause Notice dated 13.11.2001 which is beyond the normal period of limitation. Accordingly, they submit that the entire demand is barred by limitation of time and prayed for setting aside the demand along with interest and penalty imposed, on the ground of limitation.

4. The Ld. Authorized Representative appearing for the Revenue submits that there is no time-limit for issuing Notice for demand of duty payable under the Compounded Levy Scheme. In support of this contention, he cited the decision of the Hon'ble Supreme Court in the case of *M/s. Hans Steel Rolling Mill v. Commissioner of C.Ex., Chandigarh* [2011 (265) E.L.T. 321 (S.C.)].

4.1. Regarding the invocation of the provisions of Section 11A of the Act, he submits that the demand has been raised under Rule 96ZP (3) of the Central Excise Rules, 1944 read with Section 11A of the Central Excise Act, 1944; thus, the demand raised under Rule 96ZP (3) is legally tenable. Hence, he argued that the impugned demand is not hit by limitation.

5. Heard both sides and perused the appeal documents.

6. We observe that the appellant has been paying duty under the Compounded Levy Scheme @ Rs.5,08,173/- per month as fixed by the Ld. Commissioner. In the month of March 2000, they have not paid the duty since, as contended, their factory was closed for the entire month. This fact has been duly reflected in the RT-12 return filed by them for the month of March 2000. Accordingly, the appellant contends that the Notice issued on

13.11.2001 demanding duty payable for the month of March 2000 is barred by limitation. The Ld. Departmental Representative submitted that the provisions of Section 11A are not applicable in respect of demands raised under the Compounded Levy Scheme.

6.1. We observe from the Show Cause Notice that the demand has been raised by invoking the provisions of Section 11A of the Act and penalty has been imposed for contravention of the provisions of Section 11A on the ground that the appellant had *mala fide* intention to evade the payment of duty. The relevant portion of the said Show Cause Notice is reproduced below (page 2, paragraph 1): -

"... On scrutiny of the RT-12 return for the month of March, 2000 submitted by the assessee it has been noticed that the said assessee have not paid the due Central Excise duty to the tune of Rs. 5,08,173/- on the part of the assessee under self removal procedure and self assessment systems to pay the due Central Excise duty in time on the basis of their own exact determination. But it is clearly transpires that the said assessee have not paid the due, Central Excise duty to the tune of Rs. 5,08,173/- due for the month of March, 2000 deliberately and wilfully with malafied intention to evade payment of due Central Excise duty. Thus the said assessee have contravened the provisions of Section 11A of Central Excise Act, 1944 and Section 3A of Central Excise Act, 1944 as well as Rule 96ZP(3) of Central Excise Rule, 1944 and Hot Re-rolling Steel Mills Annual Capacity Determination Rule, 1997 for non-payment of due Central Excise duty in time...."

6.2. From the above, we find that the appellant has declared the non-payment of duty for the month of March 2000 in the return filed by them. They have not suppressed any information from the Department. The Show Cause Notice was issued by invoking the proviso under Section 11A on the ground that the appellant had deliberately not paid Central Excise Duty. We observe that no suppression of fact with intention to evade payment of duty exists in this case. The appellant has declared all the information in their RT-12 return and the Notice has also been issued upon scrutiny of the RT-12 return filed by the appellant for the month of March 2000. Accordingly, we are of the view that the extended period of limitation as provided under proviso to Section 11A is not invocable in the present case.

6.3. However, we observe that the demand has been raised by invoking the proviso to Section 11A of the Act. As the ingredients for invoking proviso to Section 11A does not exist in this case, we hold that the demand confirmed in the impugned order is not sustainable on the ground of limitation.

6.4. The Ld. Departmental Representative has cited the decision of the Hon'ble Supreme Court in the case of *M/s. Hans Steel Rolling Mill (supra)*. We have perused the decision referred to by the Ld. Departmental Representative. We observe that the provisions of Section 11A have not been invoked in the case referred to. However, in the present case, proviso to Section 11A has been invoked to demand duty. Hence, we observe that the said decision is not relevant to the facts and circumstances of the present case.

7. In view of the above, we set aside the demand confirmed in the impugned order on the ground of limitation and allow the appeal filed by the appellant.

(Order pronounced in the open court on **24.04.2024**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd