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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.436 of 2010

(Arising out of Order-in-Original No.8/MP/Denovo/Commr./2010 dated 08.04.2010 passed by Commissioner of Central Excise, Ranchi.)

M/s. Mongia Hi-Tech (P) Ltd.
(P.O. Burhiadih, Tundi Road, Giridih.)

...Appellant

VERSUS

Commissioner of Central Excise, Ranchi

.....Respondent

(Central Revenue Building, 5, Main Road, Ranchi-834001.)

<u>APPEARANCE</u>

Shri N.K.Chowdhury, Advocate for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

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

<u>FINAL ORDER NO. 76938/2024</u>

DATE OF HEARING : 02.09.2024
DATE OF DECISION : 02.09.2024

Per : R. MURALIDHAR :

The Appellant is engaged in the manufacture and clearance of excisable goods like ingots, billets etc. falling under CET 7206. During the period 1997-98, the Appellant opted to pay the Excise Duty in terms of Sub-Rule (3) of Rule 96ZO of Central Excise Rules, 1944. As per this Rule, the Appellants were required to discharge their duty liability of Rs.5,00,000/- per month. During the month of October 1997 instead of paying Rs.5.00 Lakhs as Excise Duty, the Appellant has paid only Rs.3,22,581/- and they have short paid Rs.1,77,419/-. In the month of November 1997 instead of paying Rs.5.00 Lakhs, they have paid only Rs.2,33,334/- and have short paid Rs.2,66,666/-. Show

Cause Notice dated 18.09.1998/21.09.1998 was issued and it was sought to know as to why a sum of Rs.4,44,085/- along with interest should not be recovered from the Appellant in terms of Rule 96ZO(3). Initially the Adjudicating authority issued the order on *ex parte* basis since the Appellant did not appear for the hearing given on 14.11.2005. On Appeal, the Tribunal remanded the matter to the Adjudicating Authority to follow the principles of natural justice and pass a considered decision. The Adjudicating authority has taken up the *de novo* proceedings and vide the impugned Order-in-Original dated 08.04.2010 has passed the present order. The Adjudicating authority has held that the Appellant is required to pay the short paid amount for the period 1st September 1997 to March 2000 along with interest on the ground that the Appellant is required to pay the duty in terms of Rule 96ZO(1) of Central Excise Rules, 1944. Being aggrieved, the Appellant is before the Tribunal.

2. The Ld.Counsel submits that the Adjudicating authority has passed the order on erroneous presumption that the Appellant has opted for payment of duty in terms of Rule 96ZO(1) whereas the Appellant had never given their option under the scheme. They were always maintaining that they are covered under Rule 96ZO(3) of the Central Excise Rules, 1944. He points out to their letter dated 19.09.1997 wherein they had written to the Commissioner specifically mentioning that they are opting for Rule 96ZO(3). Further, he draws our attention to the last paragraph of Show Cause Notice dated 18.09.1998/21.09.1998 wherein it is clearly recorded that the Appellant has opted for Sub-Rule 3 of Rule 96ZO. Further, the demand made in the said Show Cause Notice is also based on this Rule only. Hence the Adjudicating authority has gone beyond the Show Cause Notice and confirmed the duty for the period of September 1997 to March 2000 in terms of Rule 96ZO(1). Therefore, he submits that the impugned order is required to be set aside on merits. Accordingly, he prays that the Appeal may be allowed.

3. The Ld.AR reiterates the findings of the Adjudicating authority. He draws our attention to the findings given by the Commissioner at Para 16 wherein the details of Joint Verification Report dated 28.12.1999 and DC's Report dated 07.01.2000 have been referred to in order to come to a conclusion that the assessee is liable to discharge duty under Sub-Rule (3) of 96ZO. Therefore, he justifies the confirmation of duty and prays that the present Appeal may be dismissed.

4. Heard both sides and perused the appeal papers and documents presented before us.

5. On going through the Show Cause Notice dated 18.09/1998/21/09/1998 it is seen that it is a simple Show Cause Notice demanding the short paid amount of Rs.4,44,085/- in terms of Rule 96ZO(3). There is no other proposal in the Show Cause Notice seeking to charge the Excise Duty in terms of Rule 96ZO(1). Moreover, the period covered under the Show Cause Notice is only for the months of October 1997 and November 1997. On the other hand, we find that the Adjudicating authority is citing the Joint Verification Reports taken up in 1999 and DC's Report dated 07.01.2000. We do not see as to how these Verification Reports are relevant to the demand under the Show Cause Notice in question. Further, we see from the order portion that he has decided about the short payment occurring during the period September 1997 to March 2000 whereas the Show Cause Notice was issued demanding the short payment only for the period October 1997 and November 1997. This shows that the Adjudicating authority has clearly traverse beyond the scope of Show Cause Notice. There is nothing to indicate in the entire impugned order that there is any further Show Cause Notice was issued seeking to charge the Excise Duty in terms of Rule 96ZO(1) for the period September 1997 to March 2000. This being so, it would be clearly a case of non-following of principles of natural justice and not putting the Appellant to notice about the decision of the Adjudicating authority to decide the issue as to whether the same will call for Excise Duty payment under 96ZO(1) or 96ZO(3).

6. In view of the above observation, we find that the order passed by the Adjudicating authority lacks merits. Accordingly, we set aside the same.

7. The Appellant is not challenging the balance duty of Rs.4,44,085/-. However, they claimed that this has been paid by them. We direct the Adjudicating authority to verify as to whether this amount has been paid along with interest or not. If not, the same is payable immediately by the Appellant. Only for this limited purpose, the matter stands remanded. All other issues in the Appeal stand already settled by us, in favour of the Appellant.

8. The Appeal is partly allowed and disposed off thus.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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