# IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
# EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.1

**Excise Appeal No.79183 of 2018**
(Arising out of Order-in-Original No.COMMR/BBSR/CE/54/2018 dated 18.06.2018 passed by Principal Commissioner, Goods & Services Tax, Central Excise & Customs, Bhubaneswar.)

**M/s. Tata Steel Limited**
(Sukinda Chromite Mines, Kalarangiatta-755028, District-Jajpur, Odisha.)

**...Appellant**

*VERSUS*

**Commissioner of CGST & CX, Bhubaneswar**

**.....Respondent**

(C.R. Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha.)

**APPEARANCE**
Dr. Samir Chakraborty, Sr. Advocate & Shri Abhijit Biswas, Advocate for the Appellant (s)
Shri S.Dey, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)**
**HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)**

**FINAL ORDER NO. 77832/2024**

DATE OF HEARING : 12.12.2024
DATE OF DECISION : 12.12.2024

**Per : ASHOK JINDAL :**

The appellant is in appeal against the impugned order, wherein duty has been demanded on account of shortage of goods during transit from their factory till shipment.

2. The facts of the case are that the appellant is engaged in the activity of production of chrome concentrate and for the said purpose they have set up a beneficiation plant at Sukinda in the State of Odisha. Chrome ore, which otherwise has no market, is upgraded to high grade chrome concentrate in the said beneficiation plant, thereby producing a value added commodity. Since September 1996 chrome concentrate became excisable under the Central Excise Act, 1944. During the impugned period i.e. 15.04.2006 to 13.06.2006, the

appellant removed 1,02,586.620 MT of chrome concentrate for export from their factory to the port. During the impugned period, the appellant filed various shipping bills for export of chrome concentrate and it was found that for the quantity exported by them 1,02,586.620 MT of goods there is no proof of export produced by the appellant.

3. Then the Revenue sought to recover the duty by way of letter dated 28.03.2007 to demand an amount of Rs.8,30,32,485/-. The appellant replied to the said letter saying that there is a transit loss for transportation and storage at the port and the chrome concentrate is having high moisture contents and due to that if storage is taken for a longer period and transportation, loading, unloading some amount of weight loss occurs, therefore, they approached to the Central Board of Excise and Customs and correspondences were going with them.

4. Principally the Ld. Commissioner of Customs agreed that there is a transit loss of 2.5% but the case of the appellant remained pending. Therefore, in 2011 the appellant approached to the Hon'ble High Court of Orissa claiming that there is a transit loss and for that they are not required to pay duty in terms of Rule 21 of Central Excise Rules, 2002, they are entitled to claim remission of duty due to transit loss. The Revenue has issued notices under section 142 of the Customs Act, 1962 for recovery of the said amount, the appellant challenged the said order before the Hon'ble High Court of Orissa, who set aside the said notice of demand and against the said order review petition was filed before the Hon'ble High Court and the Hon'ble High Court has directed them to initiate the proper process for recovery of duty from the appellant to issue Notice under section 11A of the Central Excise Act, 1944 and that to be done within 4(four) months of the order issued by the Hon'ble High Court on 25.10.2011. Thereafter, a show cause notice was issued to the appellant under section 11A of the Central Excise Act, 1944 on 05.01.2016 to demand and recovery of the amount of Rs.8,30,32,485/- which the appellant claims to be shortage on account of transit loss during export of the goods. The matter was adjudicated.

The demand of duty was confirmed against the appellant. Against the said order, the appellant is before us.

5. Heard the parties.

6. We find that it is admitted fact that for impugned period i.e. 15.04.2006 to 30.06.2006, the Hon'ble High Court has given direction to the Revenue to complete the proceedings under section 11A of Central Excise Act, 1944 within 4(four) months from the order of the Hon'ble High Court dated 25.10.2011.

7. Admittedly, no proceedings were initiated by the Revenue against the appellant within the stipulated period granted by the Hon'ble High Court and the show cause notice has been issued on 05.01.2016 under section 11A of the Central Excise Act, 1944.

8. We find that in case, if there is evasion of duty by way of suppression of facts by an assessee, the maximum period to issue the show cause notice is 5(five) years, whereas this show cause notice has been issued after more than nine and half years which is not sustainable in the eyes of law. Accordingly, we hold that the demand against the appellant is barred by limitation. Further, we find that in other case, the Revenue itself is granting remission of duty @ 2.5% as transit loss, which is not considered in the appellant's case, therefore, on merits also, the demands are not sustainable.

9. In view of this, the impugned demand is set aside. Consequently, no penalty is imposable on the appellant.

In view of the above, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in the open Court.)

Sd/

**(ASHOK JINDAL)**
**MEMBER (JUDICIAL)**

Sd/

**(RAJEEV TANDON)**
**MEMBER (TECHNICAL)**

**sm**