IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Excise Appeal No. 841 of 2011

S.P. No. 1000/11

(Arising out of Order-in-Original No.4/Commissioner/CE/Ko-IV/2011 dated 24.05.2011 passed by Commissioner of Central Excise, Kolkata)

M/s. Nissan Ferro-Cast Limited, **: Appellant**
National Highway No. 2.
Vill.-Bhadua, P.O.-Mollerber,
Dankuni, Dist.-Hooghly (W.B),
Pin: 711 224.

VERSUS

Commissioner of Central Excise, Kolkata, **: Respondent**
M.S. Building, 7th Floor, 15/1, Strand Road, Kolkata-700 001.

APPEARANCE:

None for the Appellant

Shri S.K.Dikshit, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. 75505/ 2025

DATE OF HEARING :10.02.2025

DATE OF HEARING: 10.02.2025

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order demanding duty of Rs. 51.84 lakh and equal amount of penalty imposed under Rule 96ZO(3) of the erstwhile Central Excise Rules, 1944.

2. The facts of the case are that the appellants are engaged in the manufacture of goods specified under the relevant Notification, which were subjected to compounded levy under Section 3A of the Central Excise Act, 1944 during the period October, 1997 to January, 2000. A Show Cause Notice was issued to the appellant on 30.07.2001 alleging incorrect

determination of production capacity and consequently, short payment of duty during the relevant period. Therefore, the Show Cause Notice was adjudicated, demand of duty was confirmed and penalty was also imposed as proposed in the Show Cause Notice.

3. Aggrieved from the said order appellant is before us.

4. None appeared on behalf of the appellant nor any request for adjournment has been received. Considering the fact that appeal itself can be disposed of at this stage, therefore, appeal is taken up for disposal. As the provisions under Section 3(A) of the Act was omitted from the statue w.e.f. 11.05.2001 without saving clause accordingly, no proceedings could sustain or commence thereafter in the absence of saving clause. To support this contention he relied on the decision of the Hon'ble Gujrat High Court in the case of Krishna Processors vs. UOI-2012(280) ELT 186 (Guj.)

5. On the other hand, Ld. Authorized Representative relied on the decision of the Hon'ble Apex Court in the case of Hans Steel Rolling Mill Vs. Commissioner of C.Ex, Chandigarh, 2011 (265) E.L.T. 321 (S.C.).

6. We have gone through the said decision of the Hon'ble Apex Court in the case of Hans Steel Rolling Mill. In the said case a Show Cause Notice was issued to the associate on 03.11.1998. Whereas in this case Show Cause Notice was issued to the appellant on 30.07.2001 which is much later than the omission of Section 3A of on 11.05.2001 without saving clause. In that circumstances, the decision in

the case of Hans Steel Rolling Mills (Supra) is not applicable to the facts of the case.

7. Further we find that the Hon'ble Gujrat High Court in the case of Krishna Processors (Supra) has examined the issue and observed as under:

"*18.3. In the light of the aforesaid discussion, this court is of the view that upon the omission of Rules 96ZQ, 96ZP and 96ZO from the statute book on 1st March, 2001, no action could thereafter have been initiated thereunder. However, in view of the fact that the notification dated 1st March, 2001 amends the Central Excise Rules except as respects things done or omitted to be done by such amendment, the pending proceedings already initiated under Rules 96ZQ, 96 ZO and 96ZP could continue. Whereas after the omission of Section 3A of the Act, no action whatsoever could be initiated, continued or taken under the said provision or the rules framed thereunder or framed in respect thereof. In the circumstances, the contention raised on behalf of the petitioners that as vide clause 7 of notification dated 1st March, 2001, Rules 96ZO, 96ZP and 96ZQ were omitted without any without any saving clause and Section 3A was also omitted vide section 121 of the Finance Act, 2001 on 11th May, 2001 without any saving clause, all proceedings which were pending as on 11th May, 2001 as regards Rules 96ZO, 96ZP and 96ZQ would thereafter automatically lapse, merits acceptance. Consequently, no orders could have been passed against the petitioners under the said provisions if the actions against the petitioners were not concluded at the time of omission of Section 3A of the Act.*"

8. Following the decisions in the case of Krishna Processors Vs. Union of India (Supra) we hold that demand against the appellant is not sustainable as Show Cause Notice has been issued after omission of the Section 3A of the Act from the statue book without saving clause.

9. Therefore, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RG