

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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.77610 of 2018

(Arising out of Order-in-Appeal No.55/SKS/BOL/CE/2017-18 dated 15.03.2018 passed by Additional Director General (Taxpayer Services), Central Excise, Customs & Service Tax, Kolkata Zonal Unit, Kolkata.)

M/s. Surya Alloy Industries Ltd.

(Raturia Industrial Area, Angadpur, Durgapur-713215, Dist. Burdwan, West Bengal.)

...Appellant

VERSUS

Commr., CGST & CX, Bolpur

.....Respondent

(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

APPEARANCE

Shri Sachindra Mohan Mondal & Shri Subhas Chandra Jana, both Advocates for the Appellant (s)

Shri D.Sue, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77909/2025

DATE OF HEARING : 10.12.2025

DATE OF DECISION : 10.12.2025

RAJEEV TANDON :

Vide order dated 07.07.2022, the Registry was directed to list the matter before "next sitting of the Division Bench". However, it is noticed that since then the present appeal continues to be listed before the Single Member Bench only. A Daily Order-sheet placed in the file dated 31.07.2025 records adjourning the matter to 09/09/2025 in the interest of justice. The matter is again listed before the Single Member Bench today.

2. I have perused the case records and it is noted that the appellant in Form EA-1 at Sl.No.7,8,9 has mentioned as under :-

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| 7. | Whether duty or penalty or both is deposited, if not, whether any application for dispensing with such deposit has been made. (A copy of the challan under which the deposit is made shall be furnished.) | The entire amount of duty of Rs.1,51,165/- has already been paid, out of which an amount of Rs. 77,189/- has been paid before issue of the show cause notice in question and the balance amount of Rs.73,976/- has been paid on 05.12.2009. the amount of penalty of Rs, 1,51,164/- has not yet been paid as the same is disputed. A separate application for dispensing with pre-deposit of penalty is being filed simultaneously. |
| 8. | Whether the appellant wishes to be heard in person | Yes, a date may kindly be fixed well in advance at least giving us three weeks time to send our authorized representative for this purpose. |
| 9. | Reliefs claimed in appeal | The order in original relating to penalty passed by the Assistant Commissioner, CE, Durgapur IV Division be set aside / quashed / dropped for reasons narrated in the Statement of Facts and Grounds of Appeal. |

3. It is therefore evident as also noted from the impugned order-in-appeal under challenge that the appellant has already paid the entire amount of duty as demanded vide show cause notice dated 20.11.2009. The Order-in-Appeal in para 4 of its order has duly recorded as under:

"4. The lower authority confirmed the demand of duty of Rs.1,51,164.00 [Rupees one lakh fifty one hundred sixty four only] (Service Tax Rs.1,47,271/- + Education Cess Rs.2,945/- and S. & HE Cess Rs.948/-) only, in terms of Section 11A(2) of Central Excise Act, 1944, and the amount of Rs.1,51,271/-) paid by them (Rs.77,189.00) vide e-receipt no.00837 dated 05.08.2009 and (Rs.73,976.00) vide e-receipt no.00875 dated 05.12.2009 was appropriated."

4. This fact is also taken note of in Para 5 of the order, as part of the submissions made by the appellant before the authorities. It

therefore cannot be denied that the entire amount of duty associated with the case stands paid and appropriated.

5. It is further noted that the Ld.Commissioner(Appeals) - (the Additional Director General, DGTS, KZU, Kolkata) in para 12 of the order just before giving conclusive findings has observed as under:-

*"12. I find that in the instant case, the entire amount of duty (Rs.1,51,165/-) has already been paid; out of which an amount of Rs.77,189/- has been paid before issue of the show cause notice in question. Details of payment particulars of Rs.1,51,165/- has been intimated to the department vide Appellants letter under ref. no.SAIL/CE/140/09-10 dt.10.12.09. **thus it is clear that the appellant cannot be granted the benefit of the provisions of Section 73(3) of the Finance Act, 1994.**"*

[Emphasis supplied]

6. From the aforesaid it is evident that there is complete callousness on the part of the lower authority in pronouncing the order as the present case is not at all concerning Section 73(3) of the Finance Act, 1994 and the demand show cause notice was issued to the appellant invoking extended period of limitation in terms of section 11AC of the Central Excise Act, 1944 and not the Finance Act, 1994. Further from the orders of the lower authority I do not find any reasoning to indicate the intent to evade payment of duty on the part of the appellant which is vital for imposition of penalty under section 11AC. There is not a whisper to suggest malafides or indicate mens rea. The said provision has been mechanically invoked in the notice without a thought and application of mind, perhaps to sustain and strengthen the case for invocation of extended period of limitation.

7. Any order that is so cursorily and evasively made out, is certainly not well founded and is not tenable in the eyes of law as it lacks legal force and validity. For imposition of penalty deliberate defiance in law or a contumacious conduct, dishonest intention for evasion is required to be established. There is no finding or elaboration in the order of the lower authority below to this effect. No penalty can be routinely imposed and that too in a mere mechanical and automatic manner simply because the provision for imposition of penalty exists in law. Imposition of penalty is a quasi-criminal act and thus any discretion thereto is required to be exercised with extreme degree of caution, care and circumspection and not in a casual and callous manner. Furthermore, even the statutory provisions do provide for non-imposition of penalty under certain circumstances viz. when the duty demand was made good prior to issue of show cause notice. In this regard the following decisions can be referred, wherein it is held that no penalty should be imposed for technical or venial breach of legal provisions, or where the breach flows out of a bonafide belief that the appellant was not liable to duty or act in a manner known to law :

- a) Hindustan Steel Ltd. v. State of Orissa**
[1978 (2) ELT J159(SC)]
- b) Commrissioner of Central Excise v. JKon Engineering Pvt.Ltd.**
[2003 (151) ELT 453 (Tri.-Chennai)]
- c) Chanakya Plastics v. Commrissioner of Central Excise, Chennai**
2003 (156) ELT 912 (Tri.-Chennai)]
- d) Eid Perry v. Commissioner of Central Excise, Mumbai**
[2003 (156) ELT 753 (Tri.-Chennai)]

8. Under the circumstances and in view of the above-mentioned discussions and prayer of the appellant seeking relief of the penalty imposed and set aside the order-in-original relating to penalty imposed

by the adjudicating authority – the Id. Assistant Commissioner of Central Excise, Durgapur-IV and as maintained by the first appellate authority, there ought to be no hesitation in granting the same.

9. In view of the aforesaid, the penalty imposed on the appellant is set aside and the appeal filed is allowed to the extent of dismissing the penalty imposed on the appellant under section 11AC. The appellant shall however be liable to pay interest at applicable rates under section 11AB, if not already paid on the duty amount paid and appropriated by the authorities.

Appeal is disposed of thus.

(Dictated and pronounced in the open Court.)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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