IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Excise Appeal No.76625 of 2014

(Arising out of Order-in-Original No.35/MP/Denovo/Commr./2014 dated 18.11.2014 passed by Commissioner of CGST & Central Excise, Patna)

M/s Dina Metals Ltd.
(Abdul Rahmanpur Road, Didarganj, Patnacity, Patna-800009)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Patna
(C.R.Building (Annexe), Birchand Patel Path, Patna-800001)

Respondent

APPERANCE :
Shri N.K.Chowdhury, Advocate for the Appellant
Shri D.Sue, Authorised Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75202/2026

DATE OF HEARING : 03 FEBRUARY 2026
DATE OF DECISION : 03 FEBRUARY 2026

Per Ashok Jindal :

The appellant is seeking relief that in terms of order of this Tribunal dated 02.03.2010, the appellant is entitled to claim the modvat credit of Rs.10,80,740/- and if the demand confirmed by the adjudicating authority is Rs.11,92,911/-, then only the appellant is required to pay Rs.1,12,171/- and as the appellant has already made predeposit of Rs.5,00,000/-, therefore, the appellant is entitled for Rs.3,87,829/- and in the facts and circumstances of the case, the penalty of Rs.6,92,911/- imposed on the appellant is not sustainable.

2. The facts of the case are that the appellant was engaged in the manufacture of MS Ingot of non-alloy steel and working under Section 3A of the Central Excise Rules read with Rule 9620 operating under

Induction Furnace Annual Capacity Determination Rules during the period 1/9/1997 to 30/3/2000.

2.1 Initially the Commissioner provisionally determined the Annual Capacity of Production as 46400 M.T. when the appellant requested for re-determination of duty liability on the basis of actual production when the Commissioner vide Order dated 30/3/1999 re-determined the ACP as 48224 M.T. The said Order was challenged by the appellant before this Tribunal and this Tribunal vide Order dated 16/8/2000 remanded the matter for de novo adjudication. In the mean time, the appellant was issued with Demand cum Show Cause Notices dated 27/8/1998, 22/9/1999 and 19/12/2000. Those show cause notices were adjudicated by the Commissioner vide De novo Order dated 12/9/2001 confirming the demand of Rs.5,96,13,950/-, charging interest and imposing penalty. The said Order was again challenged by the appellant before this Tribunal and this Tribunal vide Order dated 2/4/2002 set aside the said Order and remanded the matter to the Original Authority for fresh decision since actual production was less than the ACP fixed. The Commissioner there after passed a de novo order again passing the same order on 26/7/2002. On Appeal again the Tribunal vide Order dated 7/3/2003 remanded the matter with the direction to determine actual production under sub-section 4 of Section 3A and to determine the amount payable by the appellant

2.2 The matter was thereafter referred to the Call Book and the matter was retrieved from the Call Book on 1/11/2013.

2.3 In the meantime, Department issued a show cause notice dated 3/5/2001 demanding duty on 1181.100 M.T. being the balance quantity lying in the factory and cleared on 15/4/2000 то 26/4/2000. Ad-velorem duty was calculated and after adjusting the payment already made @ Rs.750/- per M.T. The duty for the clearance of the said balance quantity was charged a 16% Ad-velorem. The said show cause notice was adjudicated vide Order dated 10/12/2001 confirming the demand of Rs.11.92.911/- and imposing penalty of Rs.1,00,000/-under Rule 173Q of the Central Excise Rules. The appellant filed an Appeal before the Commissioner (Appeal) and the Commissioner (Appeal) rejected the Appeal of the appellant. The appellant filed an Appeal before the Tribunal. The appellant deposited Rs.5.00.000/- as pre-deposit in compliance of the Order of the Tribunal. Thereafter the Tribunal finally decided the Appeal vide Order dated 2/3/2010. By the said Order, this Tribunal observed that while paying duty on actual production, the appellant would be entitled for the credit in respect of the duty paid on the inputs used in relation to the goods in question on production of necessary duty paying documents.

2.4 The appellant vide letter dated 23/1/2012 claimed MODVAT Credit of Rs.10.80,740/-enclosing all the records and documents sought by the Assistant Commissioner.

2.5 The appellant also made an application under Rule 41 before this Tribunal praying for allowing the MODVAT Credit of Rs.10.80.740/- and praying for the stay of recovery proceedings. The said application is pending before the Tribunal.

2.6 The Commissioner thereafter vide Order dated 18/11/2014 determined the quantity of actual production during the period from 1/9/1997 to 31/3/2000 and confirmed the demand and demanded Rs.6,92,911/- after adjusting pre-deposit amount of Rs.5,00,000/- and imposed penalty of the equivalent amount under Rule 96ZO.

2.7 Aggrieved from the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that initially the appellant sought determination of their liability on the basis of actual production and ultimately vide order dated 18.11.2014, the actual production was determined and as per the said order, the demand of Rs.6,92,911/- was payable by the appellant, but as per the order of this Tribunal dated 02.03.2010, the appellant was entitled to take cenvat credit on the inputs used in relation to manufacture of goods and the said amount works out at Rs.10,80,740/-. Therefore, the appellant paid excess amount and also paid Rs.5,00,000/- as pre-deposit. In this case, the excess amount to required to be refunded. Further, it is submitted that in terms of the decision of the Hon'ble Apex Court in the case of Bhagwati Steel Rolling Mills reported in 2015 (326) ELT 209 (SC), the penalty is not imposable on the appellant.

4. The ld.A.R. for the Revenue has justified the impugned order.

5. We find that admittedly vide the Order dated 02.03.2010, this Tribunal held that the production capacity is to be decided on the basis of actual production and the appellant is entitled for cenvat credit on inputs used in relation to manufacture of their final products. In terms of the said order, a demand of Rs.6,92,911/- was required to be paid by the appellant and the claim of the appellant is that they are entitled to

take the cenvat credit of Rs.10,80,740/-. The claim of the appellant is that with regard to the cenvat credit of Rs.10,80,740/- is required to be verified by the adjudicating authority. Therefore, we remand the matter back to the adjudicating authority only for verification purposes to find out how much the cenvat credit is available to the appellant in terms of the order of this Tribunal dated 02.03.2010 and thereafter, what amount has already been paid by the appellant and what amount is required to be adjusted against the impugned demand confirmed by the order dated 18.11.2014. If any amount paid in excess, the same is required to be refunded to the appellant and if any amount becomes short, the same is to be recovered from the appellant. Admittedly, the provisions of Rule 96ZO were declared ultra vires by the Hon'ble Apex Court in the case of Bhagwati Steel Rolling Mills (supra), no penalty is imposable on the appellant.

6. In view of this, we direct the adjudicating authority to pass the appropriate order as directed hereinabove within 30 days from the date of receipt of this order.

7. In the result, the appeal is allowed by way of remand.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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