IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL Nos. E/846,940/2009

(Arising out of Order-in-Original No. 13/CEX/2009 dated 21.4.2009 passed by Commissioner of Central Excise & Customs, Nashik)

MITC Rolling Mills **Appellant**

Vs.

Commissioner of Central Excise, Nashik **Respondent**

AND

Commissioner of Central Excise, Nashik **Appellant**

Vs.

MITC Rolling Mills **Respondent**

Appearance:

Shri Prasad Paranjape, Advocate, for assessee
Shri V.K. Agarwal, Additional Commissioner (AR), for Revenue

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of Hearing: 9.2.2018
Date of Decision: ________ 2018

ORDER No. A/**86628-86629/2018**

Per: Ramesh Nair

The present appeals have been filed against Order dt. 20.04.2009 passed by the Commissioner, Central Excise & Customs, Nashik.

2. The brief facts of the case are that M/s MITC Rolling Mills Pvt. Ltd during the period 2005 – 06 to 2008 – 09 had supplied goods to SEZ Developer without payment of duty by following the ARE – 1 Procedure under the provisions of Rule 30 of SEZ Rules, 2006 read with Notification No. 42/2001 – CE (NT) dt. 26.06.2001. They had availed credit of duty paid on the inputs used in such goods cleared to SEZ. They were issued show cause notice dt. 05.09.2008 alleging that they are liable to pay an amount equal to 10% of the value of exempted goods cleared to SEZ Developer in terms of Rule 6 (3) (b) (later 6 (3) (i) we.f 01.04.2008. The recovery of the same was proposed in terms of Rule 14 of CCR read with Section 11A. The adjudicating authority vide impugned order dt. 20.04.2009 confirmed the demand , however he set aside the demand for the extended period. M/s MITC Rolling Mills Pvt. Ltd being aggrieved with the confirmation of demand has filed appeal bearing No.E/846/2009 whereas the revenue has filed Appeal No. E/940/2009 against setting aside of demands of the extended period and imposition of penalty under Section 11AC.

3. Shri Prasad Pranjape, Ld. Counsel appearing for M/s MITC submits that the issue stands settled in various judgments by the Hon'ble High Court of Karnataka and this Tribunal. He has handed over bunch of judgments.

4. Shri V. K. Agarwal, ld. ADC, AR supports the impugned order.

5. We have carefully considered the submissions made by both the sides and perused the records of the case. We find that the issue stands settled by the Tribunal orders in case of M/s SUJANA METAL PRODUCTS LTD. Vs. CCE, HYDERABAD 2011 (273) E.L.T. 112 (Tri. - Bang.) as upheld by Hon'ble High Court reported in *Commissioner* v. *Sujana Metal Products Ltd. - 2016 (342) E.L.T. A115 (A.P.)],* ULTRATECH CEMENT LTD. Vs. CCE, NAGPUR 2015 (315) E.L.T. 238 (Tri. - Mumbai). In view of the above judgments, the views of the hon'ble court is that the supplies made to SEZ/SEZ developers is treated as export in terms of the SEZ Act, 2005 which overrides all the acts. Therefore in respect of the goods cleared for export, provision of rule 6 of CCR, 2004 shall not apply. We therefore hold that the demand made against the Appellant is not sustainable. The appeal filed by M/s MITC is allowed and the appeal filed by the revenue is thus dismissed.

(Pronounced in court on _______ 2018)

(C.J. Mathew)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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