**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**WEST ZONAL BENCH AT MUMBAI**
**COURT NO.2**

**APPEAL No.E/2156/10**

(Arising out of Order-in-Appeal No.PKS/324/BEL/2010 dated 24/09/2010 passed by the Commissioner of Central Excise (Appeals), Belapur, Mumbai-III)

**Nityanand Engineering Pvt. Ltd.,** : **Appellant**

**VS**

**Commissioner of Excise, Belapur** : **Respondent**

**Appearance**

Shri T.C Nair, Advocate for Appellant
Shri. S Hasija, Supdt. (A.R) for respondent

**CORAM:**

**Hon'ble Mrs.Archana Wadhwa, Member (Judicial)**
**Hon'ble Shri Sanjiv Srivastava, Member (Technical)**

**Date of hearing : 12/10/2018**
**Date of decision : 12/10/2018**

**ORDER NO.87794/2018**

***Per : Mrs.Archana Wadhwa***

1. The appellant is engaged in the manufacture of Liners, Conveyor Protecting Structure, Flood Light Towers, etc. and was availing the benefit of SSI exemption Notification No.1/93-CE dated 28/02/1993. Their factory was visited by the Central Excise officers and it was found that they had exceeded the SSI exemption limit. Accordingly,

the goods found lying in their factory, totally valued at Rs.3,08,326/- were seized.

2. On initiation of proceedings, duty demand of Rs.46,249/- was confirmed along with penalty of Rs.46,249/-. In addition, the seized goods were confiscated with an option to the appellant to redeem the same on payment of redemption fine of Rs.50,000/-. The matter made a round of Commissioner (Appeals) level as also of Tribunal which was ultimately remanded. The present impugned order stands passed in remand proceedings.

3. After hearing both sides, we find that the challenge in the present appeal is only to imposition of penalty and redemption fine of Rs.30,000/-. The appellant contention is that they were primarily engaged in cutting, bending, drilling, galvanizing, etc. of various materials sent by their customers and the issue during the relevant time was not free from doubt. It was only by the Larger Bench decision in the case of Mahindra & Mahindra reported in 2005 (190) ELT 301 (T-LB), it was held that fabrication of various iron and steel items amount to manufacture. In such a scenario, imposition of penalty upon them or confiscation of the goods is not justified.

4. After hearing the learned AR appearing for the Revenue, we note that admittedly, the issue of fabrication of various iron and steel items was the subject matter of litigation before the various forums and the legal issue was not clear. In such a scenario, the appellant cannot be held guilty of any *malafide* so as to impose penalty upon them or

confiscate the goods. Accordingly, we set aside the penalty as also the redemption fine. Appeal is allowed to that extent.

(Pronounced and dictated in Court)

***(Sanjiv Srivastava)***
***Member (Technical)***

**(Archana Wadhwa)**
***Member (Judicial)***

***PJ***