CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 89627 OF 2013

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/864-867/13-14 dated 27th September 2019 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Anil K Modani
JSW Steel Coated Products Ltd
A-10/1 MIDC Industrial Area, Kamleshwar
Nagpur – 441501 … ***Appellant***

versus

Commissioner of Central Excise
Kendriya Utpad Shulk Bhavan, Telangkhedi Road,
Civil Lines, Nagpur - 440001 ***…Respondent***

WITH

EXCISE APPEAL NO: 89628 OF 2013

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/864-867/13-14 dated 27th September 2019 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Suresh A Dalvi
JSW Steel Coated Products Ltd
A-10/1 MIDC Industrial Area, Kamleshwar
Nagpur – 441501 … ***Appellant***

versus

Commissioner of Central Excise
Kendriya Utpad Shulk Bhavan, Telangkhedi Road,
Civil Lines, Nagpur - 440001 ***…Respondent***

AND

EXCISE APPEAL NO: 89629 OF 2013

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/864-867/13-14 dated 27th September 2019 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

S P Dahiwade
JSW Steel Coated Products Ltd
A-10/1 MIDC Industrial Area, Kamleshwar
Nagpur – 441501 … ***Appellant***

versus

Commissioner of Central Excise
Kendriya Utpad Shulk Bhavan, Telangkhedi Road,
Civil Lines, Nagpur - 440001 ***…Respondent***

APPEARANCE:

Shri Anuj Shah, Chartered Accountant for the appellants

Shri Xavier R Mascarenhas, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 87176-87178/2023

DATE OF HEARING: 23/08/2023
DATE OF DECISION: 30/11/2023

PER: C J MATHEW

These three appeals of S/Shri Anil K Modani, Suresh A Dalvi and S P Dahiwade are all that survives from among the several challenges to the order[1] of the Commissioner of Central Excise and Customs (Appeals) Nagpur upholding the confirmation by original authority of proposals in the show cause notice issued to M/s JSW

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[1] [order-in-appeal no. NGP/EXCUS/000/APPL/864-867/13-14 dated 27th September 2019]

Ispat Steel Ltd and others for recovery of duty of ₹ 34,56,930/- under rule 14 of CENVAT Credit Rules, 2004 along, with appropriate interest, and imposition of penalty of like amount under rule 15 of CENVAT Credit Rules, 2004 as well as other detriments such as redemption fine in lieu of confiscation under rule 25 of Central Excise Rules, 2002 and penalties on several other entities and individuals under rule 26 of Central Excise Rules, 2002 while accepting certain contentions of the principal-appellant to set aside the redemption fine and modify penalty under rule 15(3) of CENVAT Credit Rules, 2004.

2. The appeals filed thereafter by the appellants herein, as well as M/s JSW Ispat Steel Ltd, were pending when framework for relief under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 was incorporated in chapter V of Finance Act, 2019. M/s JSW Ispat Steel Ltd preferred application under the scheme and their appeal was, in accordance with law, deemed as withdrawn. The three individual-appellant are now before us with the plea that the proceedings against them do thereby, stand concluded.

3. Learned Chartered Accountant appearing for the appellants submitted that the Tribunal has, in several decisions, held that, with the termination of proceedings against the principal-noticee, the detriments against others would not survive.

4. Learned Authorised Representative submitted that this plea is

not tenable as separate declarations are prescribed for separate appeals in notification no. 5/2019-CE dated 21st August 2019 operationalising the said scheme. Reliance was placed on the decision of the Hon'ble Supreme Court in *Union of India v. Ind-Swift Laboratories Ltd [2011 (265) ELT 3 (SC)]* precluding any reading down that has the effect of dilution of intent of the statute.

5. We find that the decision in *re Indi-Swift Laboratories Ltd,* relied upon by the Learned Authorised Representative, was in the specific context of 'conjunctions' employed in rule 14 of CENVAT Credit Rules, 2004 and the consequence thereof for recovery of credit along with interest. Chapter V of Finance Act, 2019 expressly pertains to 'legacy dispute resolution scheme' which considered deposit of duty involved in dispute to suffice for grant of relief of interest, penalty and any other consequence under Central Excise Act, 1944 or Finance Act, 1944. The scheme is all about 'tax dues' which itself has been set out in section 123 of Finance Act, 2019 with all the alternatives restricting themselves to the total amount of duty or total amount of duty in dispute, as the case may be. Furthermore, section 124 of Finance Act, 2019 specifies relief as percentage of 'tax dues' and of late fee/penalty should those be the only detriments contemplated in a proceeding. It would, therefore, appear that a person imposed with penalty would be eligible to be 'declarant' subject to there being no demand of tax pending in the impugned proceedings.

6. Therefore, to the extent that the impugned order upheld recovery of duties under section 11A of Central Excise Act, 1944 none of the individual appellant herein would have been eligible to be declarant; the scheme itself does not acknowledge the existence of such appellant even though the scheme is intended to erase the detriment of penalty in each and every case. It is on record that the principal-noticee has been accorded the prescribed relief including erasure of penalties arising therefrom. Even though the appellants herein could not, at the time of existence of the scheme have derived the benefits from the coverage by the scheme, the intent and purpose of the scheme being collection of the duty or some percentage thereof, and forgoing interest, fine and penalty, the disposal of the application of M/s JSW Ispat Steel Ltd renders the continuance of the penalty against the three appellants to be not in conformity with the relief scheme. Accordingly, they are eligible for erasure of the penalties against them.

7. For the above reasons, we allow these appeals and set aside the impugned order.

(Order pronounced in the open court on 30/11/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*