CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86640 OF 2013

[Arising out of Order-in-Original No: 05/CEX/2013 dated 22nd January 2013 passed by the Commissioner of Central Excise, Customs & Service Tax, Nashik.]

Commissioner of Central Excise, Customs & Service Tax
Nashik … ***Appellant***
Kendriya Rajaswa Bhavan, Gadkari Chowk
Nashik - 422002

versus

Ramanand Steel Ltd ***…Respondent***
S.No. 155 Shiv Gulvanch Road, Sarlia Nagar
Behind STICE, Sinnar, Dist: Dashik

APPEARANCE:

Shri Amrendra Kumar Jha, Deputy Commissioner (AR) for the appellant

None for the respondent

CORAM:

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

FINAL ORDER NO: 85325/2024

DATE OF HEARING: 21/09/2023
DATE OF DECISION: 14/03/2024

PER: C J MATHEW

This appeal, prompted by review effected under section 35E of

Central Excise Act, 1944 by Committee of Chief Commissioners, of Commissioner of Central Excise, Customs & Service Tax, Nashik challenges its own order by which proposal, for recovery of ₹ 2,47,05,672, already discharged as duties of central excise for the period from March 2011 to July 2011 by debit of CENVAT balance, in another manner under section 11A of Central Excise Act, 1944, along with interest thereon under section 11AC of Central Excise Act, 1944, besides imposition of penalty under rule 25 of Central Excise Rules, 2002, in notice dated 27th March 2012 was modified to accept the duty already so discharged subject to payment of interest arising therefrom till 28th May 2012 and imposition of penalty of ₹ 5000 under rule 27 of Central Excise Rules, 2002. The reviewing authority was aggrieved that the assessee had not been subjected to the requirement of rule 8(3A) of Central Excise Rules, 2002 and that penalty had not been imposed under the rule proposed in the notice even though the duty liability for the disputed period was not disturbed and interest was directed to be paid. A brief overview of the facts and circumstances would be of assistance in evaluating the legality in the appeal.

2. In terms of

> *Explanation.- For the purposes of this rule, the expressions 'duty' or 'duty of excise' shall also include the amount payable in terms of the CENVAT Credit Rules, 2004.*

below rule 8 of Central Excise Rules, 2002 permits deposit in government account or by debit of CENVAT balance or combination of both to suffice for discharge of duty liability on clearances of the previous month. Should there be default at anytime, and upon expiry of grace period of 30 days thereon, the assessee was, under rule 8(3A) of Central Excise Rules, 2002, deprived of the option of resorting to credit balance in CENVAT account till the duty not discharged was made good along with interest.

3. Though the proceedings in the notice issued to M/s Ramanand Steel was triggered by the alleged failure to discharge duty liability of ₹ 65,66,841 cumulatively comprising of ₹ 30,90,296, ₹ 26,46,832 and ₹ 8,29,713 in January 2011, February 2011 and March 2011 respectively, the adjudicating authority focused on the admitted failure to fulfill obligations of January 2011 as sufficient for the purpose of determining legality; duty liability for the three months had been made good only by 19th March 2012 with interest paid only as late as 26th May 2012, the undischarged duty liability of February and March 2011. The proposal for substitution of manner of payment of duty is limited only to ₹ 2,47,05,672 for March 2011 to June 2011 implying that rule 8(3A) of Central Excise Rules, 2002 had been complied with thereafter. We, thus, have recovery by resort to substitution imperative for clearances of March 2011 onwards till July 2011 which should actually have included liability for duties arising on clearances of February and March 2011 too.

4. The adjudicating authority was, at the time of adjudication on 22nd January 2013, conscious of due discharge of liabilities for January-March 2011, along with interest - of ₹ 10,15,599 on 26th May 2012 and 28th May 2012 – thereon as to be less concerned with technical minutiae than with substantive compliance. It was held in the order that the amount did stand recovered, along with interest, by the stage of adjudication and, therefore only imposition of penalty under section 11AC remained along with the issue of discharge of tax liability by deposit for the succeeding months upto July 2011. There is a clear finding that, in view of all declarations having been made and the deficiency noted therefrom, none of the ingredients permitting imposition of penalty under section 11AC of Central Excise Act, 1944 were existent. The appeal has not controverted this finding. The impugned order also found that the stipulation on manner of payment of duty has been breached for March 2011 to July 2011 but that, in the absence of recovery mechanism in Central Excise Rules, 2002, only penal consequences may arise. This, too, has not been controverted in the appeal. It was also held that the disputed amount, as arrears of duty, was payable either by deposit or debit of CENVAT balance in much the same way as regular discharge of duty liability. Reliance was placed on the decision of the Tribunal in *Solar Chemferts Pvt Ltd v. Commissioner of Central Excise, Thane-I [2012 (276) ELT 273 (Tri-Mumbai)]*.

5. It is here that the appeal seeks to agitate its displeasure with adjudicating authority for compliance with judicial discipline thus

> *‘12. The Commissioner, while discussing the payment of Rs. 2 47 05 672/ through CENVAT Credit in para 21 and 22 of the Order-in-Original, did agree that there was a clear violation of Rule 8(3A) of the Central Excise Rules, 2002 by the assessee but still concluding that the amount of Rs.2,47,05,672/- stood corrected when defaulted amount alongwith interest has been paid on 28.05.2012. For the said inference, the Commissioner has relied solely on CESTAT's order No. A/545/2011-WZB/C-II(EB) dated 13-06-2011 in the case of Solar Chemferts Pvt. Ltd. Vs CCE, Thane-I reported in 2012 (276) ELT 273 (Tri-Mumbai).*
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> *13. It is pertinent to mention that law, in the form of Acts and Rules, will always prevail over judgments. Therefore, overlooking the provisions of the law and abiding by a single judgment would certainly not be appropriate. By accepting the payment of Rs.2,47,05,672/- through CENVAT Credit and treating it as finally paid on 28.05.2012, the Commissioner has overlooked/waived the applicability of the provisions of Rule 8(3A) of the Central Excise Rules, 2002, thus defeating the essence of the said rule.*
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> *14. Similarly, while imposing penalty on the assessee for contravention of Rule 8(3A) of the Central Excise Rules, 2002, the Commissioner followed the same CESTAT's order and imposed penalty of Rs. 5000/- only under Rule 27 of the CER, 2002 instead of Rule 25 of the CER, 2002 which was proposed in the Show Cause Notice. Thus, the Commissioner appears to have travelled beyond the scope of the Show Cause Notice and imposed penalty under a rule which was not even proposed. The Commissioner ought to have imposed a penalty*

> *under Rule 25 of the CER, 2002 as proposed in the Show Cause Notice since the assesse intentionally avoided paying the duty for the month of March 2011 to July 2011 on consignment-wise basis and through PLA/Challan/Cash. Any penalty should have a deterrent effect so that intentional acts against the law are not repeated.'*

which, to us, appears to be gross misdaventure. That precedent is binding and that precedent cannot be discarded, merely owing to its singularity, does not seem to have occurred to the reviewing authority. That the only counter to precedent which binds is a contrary decision does not also have occurred to the reviewing authority as evident from absence of such proposition in the appeal now before us.

6. *Per contra*, the grounds of appeal put forth the unheard of, and perverse, proposition that law, in the form of Act and Rules, will always prevail over judgements; apparently, these worthies are unaware that law comprises streams which include legislated statutes and judge-rendered opinions. They also seem to be in ignorance of interpretative function which vests exclusively in the judicial institutions. If that is the comprehension of law among enforcers of an enactment that is also the author of their being, it is a saddening to those who believe in rule of law. Indeed, Montesquieu, and several of those who followed, would surely be turning over in their graves at this patent disrespect for this fundamental foundation of rule of law.

7. The impugned order has directed that duty discharge must be

accompanied by interest. There is no appeal against that part of the order.

8. In view of the above, we find no reason to interfere with impugned order. Appeal stands dismissed.

(Order pronounced in the open court on 14/03/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*