

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76338 of 2018

(Arising out of Order-in-Appeal No.101/DGP-C.Ex/2018 dated 19.01.2018 passed by Commissioner of CGST & Central Excise (Appeals), Siliguri Appeals Commissionerate, Siliguri.)

M/s. Surya Alloy Industries Limited

(Vil.-Ghutgoria, Kadasole, Barjora, Bankura-722202.)

...Appellant

VERSUS

Commissioner of CGST & CX, Bolpur Commissionerate

.....Respondent

(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75282 / 2022

DATE OF HEARING : 18 May 2022

DATE OF DECISION : 18 May 2022

P.K.CHOUDHARY :

M/s. Surya Alloys Industries Ltd. (appellant herein) made clearance of 460 numbers of 'Fish Plate' during the month of August 2008 vide Invoice No.477 dated 23.08.2008 to M/s. Era Infra Engg. Ltd. availing exemption under Notification No.108/95-CE dated 28.08.1995 as amended.

2. In course of audit by the departmental officers it was found that the Appellant did not procure any certificate supporting the availment of the benefit of the exemption Notification and in absence of the same it was held that the Appellant was not eligible to the exemption in respect of the above finished products. A show cause cum demand notice dated 22.04.2013 was issued wherein at para 2.5 it has been

recorded that the assessee agreed to the observation of audit on the issue of clearance of 460 numbers of 'Fish Plate' and thereafter paid the duty involved i.e. Rs.48,916/- (Cenvat) + Rs.978/- (HE Cess) + 489/- (SHE Cess) through the Cenvat account vide Sl.No.1140 from their input credit register of financial year 2010-11 dated 26.11.2010. They also paid the interest of Rs.14,535/- vide GAR-7 challan No.02219 dated 05.02.2011 against the delayed payment of the same.

3. The Ld.Advocate appearing for the Appellant submitted that there was no occasion of issuance of a Show Cause Notice as the appellant had paid the duty with interest even prior to issuance of the Show Cause Notice. He further submits that though the adjudicating authority appropriated the amount of duty along with interest he proceeded to impose the penalty in terms of Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002 alleging suppression of material facts with intention to evade payment of duty. Being aggrieved with the Order-in-Original the appellant preferred an Appeal before the Ld.Commissioner(Appeals). However, he confirmed the penalty. The appellants are in appeal assailing the order of the Ld.Commissioner(Appeals).

4. The Ld.Authorized Representative for the department justified the impugned order.

5. Heard both sides and perused the Appeal records.

6. From the aforesaid facts it is clear that the appellant paid the duty with interest even prior to issuance of Show Cause Notice. If that is so, the authorities had no jurisdiction to initiate proceedings at all and consequently the question of payment of penalty would not arise at all. The Ld.Commissioner(Appeals)'s observation that had the department not pointed out the discrepancy the deficit amount would not have been paid, is an inference not supported by allegation in the notice nor any evidence leading to the conclusion that the Appellant had suppressed the facts. In these circumstances the penalty imposed under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002, cannot be sustained and is therefore set

aside. Consequently, the impugned order-in-Appeal is set aside to the extent of confirmation of penalty.

Appeal is disposed of in the above terms.

(Dictated and pronounced in the open Court.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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