

(2014) 04 AHC CK 0192

In the Allahabad High Court

Case No : Central Excise Appeal No. 221 of 2010

Aswad Steels and Alloys P. Ltd.

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (2014) 26 GSTR 370

Hon'ble Judges : Shashi Kant, J; Rajesh Kumar Agrawal, J

Bench : Division Bench

Advocate : Piyush Agrawal and S.K. Mishra, Advocate for the Appellant; R.C. Shukla, Senior Standing Counsel, Advocate for the Respondent

Judgement

1. Heard Shri Piyush Agrawal, the learned counsel for the appellant and Shri R.C. Shukla, senior standing counsel for the respondents and perused the record. This is an appeal against the order of the Tribunal dated October 16, 2009, passed in Excise Appeal No. E/2689 of 2007, by which the Tribunal has imposed the penalty equal to the amount of short-paid duty.

2. The brief facts of the case are that the appellant is engaged in the manufacturing of M.S. ingots chargeable under sub-heading 7206 90 of the tariff. For the period of November % 1998 to March 31, 1999, admittedly, the appellant has not deposited the duty of Rs. 2,66,667 within the specified period. The appellant has given the option to pay the duty under rule 96ZO on the basis of the capacity of the induction furnace of four metric tone. In view of the option given under rule 96ZO of the Central Excise Rule the appellant was required to pay Central excise duty amounting to Rs. 6,66,667 per month for the period of November 1, 1998 to March 31, 1998, but has paid the duty of Rs. 30,66,667 instead of Rs. 33,33,335. Thus, there was a short deposit of Rs. 2,66,668 during the aforesaid period, which could not be deposited within the stipulated period. However, the same has been deposited subsequently along with the interest. The adjudication authority issued show-cause notice raising demand of Rs. 2,66,668,

interest and for penalty under rule 96ZO. The appellant contended that the duty has been deposited along with the interest before the issuance of the notice and there was no deliberate default. The Assistant Commissioner, Central Excise, vide order dated February 9, 2005 has confirmed the demand of Rs. 2,66,667 under rule 9(2) read with section 11A of the Central Excise Act, 1944 and further confirmed the demand of interest and also levied the penalty at Rs. 20,000 under rule 96ZO of the Central Excise Rules, 1944. The Revenue filed the appeal before the Commissioner (Appeals), Central Excise, Meerut on the ground that rule 96ZO(3) provides the levy of penalty equal to the amount of short-paid duty, and therefore, the amount of penalty ought to have been levied at Rs. 2,66,667. The Commissioner (Appeals) allowed the appeal and imposed the penalty of Rs. 2,66,667. It may be mentioned that against the order of the Assistant Commissioner, levying the penalty at Rs. 20,000 no appeal has been filed by the appellant. Against the order of the Commissioner (Appeals) the appellant filed an appeal before the Tribunal. The Tribunal remanded back the matter to the Commissioner (Appeals) for deciding the appeal afresh in the light of the decisions of the Punjab and Haryana High Court in the case of CCE v. K.C. Alloys and Steel Castings reported in [2006] 206 ELT 1183 (P & H). The Commissioner of Central Excise (Appeals) decided the appeal and confirmed the order of the Assistant Commissioner and the levy of penalty of Rs. 20,000. Being aggrieved the Revenue filed the appeal before the Tribunal. The Tribunal allowed the appeal and modified the order of the Commissioner (Appeals) to the extent enhancing the amount of penalty to the extent of quantum of short-paid duty. The Tribunal has held that the issue involved is settled by the hon''ble apex court in the case of Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, , wherein the Hon''ble Supreme Court has held that in view of the language of rule 96ZO(3), prescribing penalty equal to the duty short-paid/not paid, there is no discretion for the adjudicating authority to impose penalty lower than the amount of duty involved. Being aggrieved the appellant filed the present appeal.

3. The learned counsel for the appellant submits that having regard to the facts and circumstances of the case and on consideration of explanation, the Assistant Commissioner levied the penalty at Rs. 20,000. He further submits that the rule 96ZO has been declared ultra vires by the Punjab and Haryana High Court in the case of Bansal Alloys and Metals Pvt. Ltd. Vs. Union of India (UOI), .

4. Shri R.C. Shukla, the learned counsel for respondents submits that the question of validity of rule is not subject matter of consideration in the present case. The default is admitted by the appellant inasmuch as the order of the Assistant Commissioner, levying the penalty at Rs. 20,000 has been accepted by the appellant and no appeal has been filed. The only question for consideration is whether the adjudicating authority has a discretion to impose the lesser penalty than the amount provided under rule 96ZO, which provides the amount of penalty equal to the duty short-paid/not paid. Relying upon the decision of Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, ,

submitted that Assistant Commissioner could not exercise his discretion to levy the lesser penalty than provided in the rule. He further submitted that the decision of the apex court in the case of Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, has been followed by the apex court in the case of Union of India (UOI) Vs. Rajasthan Spinning and Weaving Mills, and further by the Division Bench of this Court in the case of Commissioner of Customs and Central Excise Vs. M/s. Majestic Auto Ltd., .

5. We have considered the rival submissions of the learned counsel for the parties.

6. The validity of rule 96ZO is not under consideration before us. The default is also not in dispute. Admittedly, the appellant has not deposited the amount within the specified period and has deposited the amount along with the interest beyond the specified period, therefore, the appellant is liable for the penalty under rule 96ZO(3). The Assistant Commissioner has levied the penalty at Rs. 20,000. The only dispute is whether the assessing authority can exercise the discretion to levy the lesser amount of penalty than the amount provided under rule 96ZO(3). The issue involved, is squarely covered by the decision of the apex court in the case of Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, , wherein it has been held that rule 96ZO(3) provides the levy of equal amount of penalty to the duty short-paid/unpaid and authority has no discretion to impose the penalty lower than the amount of duty involved. The view of the apex court in the case of Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, has been followed by the apex court in the subsequent decision in the case of Union of India (UOI) Vs. Rajasthan Spinning and Weaving Mills, and the same has been followed by the Division Bench of this court in the case of Commissioner of Customs and Central Excise Vs. M/s. Majestic Auto Ltd., . In view of the above, we do not find any error in the impugned order. The appeal fails and is dismissed.