

2013 (2) ECS (111) (Tri - Kol)

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
East Regional Bench, Kolkata**

M/s Tata Steel Ltd

Versus

Commissioner of Central Excise and Service Tax

Stay Petition Nos. 13,14,15 & 16/2007

In

Excise Appeal Nos. 27, 28, 29 & 30/2007

(Arising out of the Order –in – Original No. 09/COMMR/2006 dated 28.09.2006 passed by the Commissioner of Central Excise, Jamshedpur)

- 1) M/s Tata Steel Ltd
- 2) Shri Kanchan Roy
- 3) Shri R. Sankaran
- 4) Shri R C Nandrajog ...Appellant

Versus

Commissioner of Central Excise and Service Tax ...Respondent
Jamshedpur

APPEARANCE:

Sri Samir Chakroborty, Advocate &
Sri Abhijit Biswas, Advocate

FOR APPELLANT

Sri S Misra, Addl. Commissioner (A R)

FOR THE RESPONDENT

CORAM:

DR. D. M. MISHRA, HON'BLE TECHNICAL MEMBER

DR. I. P. LAL, HON'BLE TECHNICAL MEMBER

DATE OF HEARING & DECISION : 22.03.2013

STAY ORDER NO: S – 113 – 116/KOL/2013 DATED 22.3.2013

“We find that the issue involved is scrutiny of rival claims on the correctness of inclusion and / or exclusion of clearance documents/invoices in the recapitulation statement and consequent discharge of duty during the relevant period. In other words, it is a pure question of appreciation of facts and evidences, which could be possible only at the time of hearing of the appeal.” [Para 4]

Per DR. D M MISRA

1. The present applications are filed by Applicant No. 1, M/s Tata Steel Ltd. seeking waiver of pre – deposit of duty of Rs 34.62 crores and penalty of Rs. 33. 10 crores and by other. Applicants seeking waiver of personal penalty of Rs. 10.00 Lakhs, imposed on each of them.
2. The Ltd. Sr. Adovate Dr. Samir Chakraborty, for the applicants has submitted that the applicant no. 1 had been extended the facility of consolidated debit of Central Excise Duty against clearances made during the day, instead of making debit against clearances of each consignment of goods during the day. As a matter of practice, the applicant prepared as statement called ‘Daily Recapitulation Statements’, in which particulars of invoices issued for the day, were listed and from the said Recapitulation Statement so prepared, payment of duty for the whole day was made either debiting the PLA or Modvat Account, as the case may be. During the course of Audit of Central Excise records in the year 1997, it was noticed that the applicant had not taken into account around 18 invoices, in the recapitulation statement and no duty was discharged on the same during the relevant period. The applicant no. 1 paid an amount of Rs. 39,74,168/- on 17.12.1997 under protest. Later, it was alleged in another 12 invoices, no duty was paid. It is the grievance of the Ld. Adv. that the discrepancy noticed in respect of 30 invoices, were generalized and applied to 25000 invoices, and the show cause notice was issued to them demand duty of Rs. 45,91,24,705.76. The Ld. Advocate had also submitted that resisting to the said demand of non – payment of excise duty on the clearance made during the relevant period, they have submitted a detail statement, invoice wise, correlating to the clearance made during the relevant period, vis – a – vis the allegation in

the impugned notice, before the Ld. Commissioner during the adjudication proceeding. In their reply to the Notice, they have admitted that an amount of Rs.4,82,07,328.94 was required to be paid by them, but an excess payment of Rs. 4,67,84,431/- was also made and required to be considered. The Ld. Advocate has submitted that even though the statement was referred to and said to have been considered in the impugned Order, but the applicants were not given an opportunity, to explain wherever their explanation in the statement, was not considered and rejected. However, the Ld. Sr. Advocate made a fair offer to pre – deposit an amount of Rs. 6.00 crores.

3. The Ld. A.R. (Addl. Commissioner) on the other hand submitted that the adjudicating authority had considered the statement in detail and reduced the liability from Rs. 45,91,24,705.76 to Rs. 34,62,23,989.89. Therefore, it is incorrect to say that their explanation in the form of statement was not considered by the Ld. Adjudicating Authority. However, he has fairly conceded that while not accepting the explanation furnished in the statement relating to certain entries, the Appellant was not given an opportunity to explain their stand.
4. We have considered the rival submissions and perused the records. We find that the applicant no. 1 has been engaged in the manufacture of iron & steel products, in an integrated steel plant, and were accorded a facility of consolidated debit entry of duty at the end of day, against clearances made during the day, on the basis of a Trade Notice issued by Board in the year 1971, during the relevant period i.e. between 1993 and 1998. In availing the said facility, they were required to prepare a Recapitulation Statement, mentioning the list of invoices against which clearances were made, alongwith the amount of duty involved. During the course of audit, in the year 1997, some discrepancies were noticed relating to 18 invoices, where these invoices were found to be not included in the Recapitulation Statement and accordingly duty was not paid. Later 12 more invoices of this category were noticed. It is the contention of the Ld. Adv. for the Appellant that these thirty invoices were made the basis and generalized to around 25000 invoices and accordingly, demand notice was issued, directing them to pay Rs. 45,91,24,705.76. In response to the said notice, the applicant has furnished detailed statement during the course of adjudication proceeding, whereby, they have submitted that there has been a short payment of Rs. 4.82 crores but also claimed that an excess payment of Rs. 4.76 crores were also made. It is their grievance that the reconciliation statement furnished by them, during the adjudication proceeding, were not properly scrutinized and appreciated by the adjudicating authority and they were not given a chance, to explain it further, by the Ld. Commissioner, who unilaterally interpreted the said

statement and concluded the short payment of duty of Rs. 34.62 crores. We find that the issue involved is scrutiny of rival claims on the correctness of inclusion and / or exclusion of clearance documents/invoices in the recapitulation statement and consequent discharge of duty during the relevant period. In other words, it is a pure question of appreciation of facts and evidences, which could be possible only at the time of hearing of the appeal. For the present purpose, the offer made by the Ld. Advocate to deposit Rs. 6.00 Crores (Rupees Six Crores), is accepted and accordingly we direct the applicant no. 1 to deposit an amount of Rs. 6.00 Crores (Rupees Six Crores) within a period of Four weeks from to – day and report compliance on 29th of April, 2013. On deposit of the said amount, the balance amount of dues adjudged against all the applicants, would stand waived and its recovery stayed during the pendency of the Appeal. Failure to deposit the said amount by Applicant no. 1, would result dismissal of all the Appeals, without further notice.

(Dictated and pronounced in the open court.)