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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CEAC 14/2016 & C.M.Appl.Nos.40886-40889/2016

\+ CEAC 15/2016 & C.M.Appl.Nos.40890-93-40889/2016

PRINCIPAL COMR. OF CENTRAL EXCISE, DELHI-1

..... Petitioner

Through: Ms. K. Enatoli Sema, Adv.

versus

SINHAL METAL INDUSTRIES LTD. .... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% 04.11.2016

1. The question of law sought to be urged by the Commissioner of Central Excise is with respect to the order by which the CESTAT had confirmed the order of the Commissioner of Central Excise (Appeal), which had given relief to the respondent/assessee against whom notice under Section 11A had been issued. The order-in-original had confirmed the demand in the show cause notice to the tune of ₹41,07,486/-. In appeal the Commissioner reduced the duty liability after noticing that ₹27,95,666/- had been deposited. The duty confirmed was ₹15,54,266/-. So far as the mandatory penalty under Section 11AC went, the Commissioner noticed the judgment of the

CESTAT in M/s *Weldon Cello Plast Ltd. vs. Commissioner of Central Excise, Delhi-IV* (2013) 287 ELT 141. The amount of penalty too was reduced in the circumstances.

2. The Revenue was aggrieved and approached the CESTAT. At that stage of hearing, the CESTAT relied upon the decision of Gujarat High Court in *Indsur Global Limited v. Union of India* 2014 (310) ELT 833 (Guj.) which held that Rule 8(3A) was ultra virus. Consequently, the denial of credit which was the rule and bound the authorities was held inapplicable. Apparently, the assessee was entitled to credit in excess of ₹11 lakhs. The appeal filed by the Revenue was rejected and correspondingly relief was granted to the assessee.

3. Ms. K. Enatoli Sema, learned counsel for the Revenue urges that the Tribunal lost sight of the mandatory nature of Section 11AC which requires penalty, at least to the tune of 25% of the determined amount. Since the adjudicating authority had confirmed the demand in excess of ₹41 lakhs on a finding of deliberate withholding of tax, the penalty was leviable.

4. At the outset, this Court notices that the reasoning of the CESTAT is based upon declaration in *Indsur Global (supra)* that provisions of Rule 8(3A) that had prevented the adjustment of cenvat credit, in certain circumstances, was no longer a barrier. This meant that with respect to the payments towards duty or any other amounts, cenvat credit was available. Furthermore, Section 11AC (2) itself clarifies that in case the determination of the order-in-original of the adjudicating authority undergoes a change at the appellate level where

the concerned authority might reduce or grant complete relief that order would prevail for the purpose of determination of any amount or penalty under Section 11 AC.

5. So viewed, the final order of the CESTAT cannot be faulted, both the appeals are, therefore, dismissed. All the pending applications are also disposed of.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 04, 2016
mr