**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CENTRAL EXCISE APPEAL NO.15 OF 2016

M/s Maha Metal Industries Ltd.,
Gut No.88, Beed Road,
Zalta village, Aurangabad .. Appellant

Versus

The Commissioner of Central
Excise, Aurangabad Commissionerate,
N-5, Town Centre, CIDCO,
Aurangabad .. Respondent

Mr Abhay Kolte, Advocate h/f Mr P.A. Pisal, Advocate for appellant
Mr D.S. Ladda, Advocate for respondent

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVALE, JJ**

DATE : 18th January 2018

PER COURT

1. Heard Mr Kolte, learned Advocate for appellant and Mr Ladda, learned Advocate for respondent. Upon hearing the learned Counsel for respective parties, following substantial question of law arises:

> “ Whether CESTAT was justified in distinguishing the ratio of judgment of this Hon'ble Court in Blue Star Ltd. - 2010 (250) ELT 179 (Bom) and holding that interest was payable from date of passing of first Order-in-Original dated 16.9.1998 when, in appeal, the matter was remanded by the CESTAT to Commissioner for re-quantification of demand, and thereafter certain demand was confirmed vide second Order-in-Original dated 31.3.2005 ?”

2. The contention of the appellant is that appellant would be liable to pay interest after the order is passed in Original by the authority pursuant to the order of remand and not from the date the order in Original passed before remand.

3. The learned Advocate for the appellant relied on the judgment of this Court in the matter of **Blue Star Ltd., Vs. Union of India,** reported in **2010 (250) E.L.T. 179 (Bom.).**

4. Mr Ladda, learned Advocate for respondent submits that while remanding the matter, the adjudicating authority did not set aside the order in Original and only to ascertain the procedural requirement had remitted the matter. The appellant is required to self assess the duty payable. The Tribunal has rightly considered the order of remand and held that the duty was payable from the date of first order in Original. The judgment relied by the appellant does not apply to the facts of the present case.

5. We have considered the submissions canvassed by the learned Advocates for respective parties.

6. The order in Original was passed on 16.9.1998. The appellant challenged the said order before appellate authority. The appellate authority remitted the matter to the adjudicating authority. The Tribunal while remitting the matter observed as follows :

> "6. The other contention that duty has been demanded on the sale price of the corrugated sheets and that value has been recalculated by arriving at the cum duty price assessable value by deducting the duty element also has to be accepted. The matter has to be remanded to the Commissioner for determination of these two aspects for passing orders in accordance with law after considering

> the materials which the counsel for the appellants undertakes to produce within two months from the receipt of this order."

7. Thereafter, the adjudicating authority passed the order on 31.3.2005 imposing liability upon the appellant to pay penalty on Rs.2,62,633/-. The appellant paid the same along with penalty of Rs.1,00,000/- on 31.5.2005 under Section 179Q of the Central Excise Act.

8. Before remand, the adjudicating authority had imposed liability upon the appellant to the tune of Rs.53,15,684/-. After remand of the matter, the adjudicating authority redetermined and confirmed demand of Rs.46,22,322/- and gave benefit of modvat credit of Rs.43,59,689/- thereby directing the appellant to pay Rs.2,62,633/- and penalty of Rs.1,00,000/-. The liability came to be determined eventually on 31.3.2005.

9. Only because in the order of remand, the Tribunal did not record the words "set aside the order of adjudicating authority", that would not mean that while remitting the matter, the Original order was intact. There is another reason to conclude that the original order was set aside while remanding the matter. The duty determined in the first order and the second order after remand is different. Even, the demand of duty confirmed is different apart from the benefit of modvat credit.

10. The judgment of this Court in the case of Blue Star (cited supra) would squarely apply.

11. As far as the penalty is concerned, the Tribunal has reduced the penalty from Rs.1,00,000/- to Rs.20,000/-.

12. The substantial question of law is answered in favour of appellant. The impugned judgment and order are set aside except to the extent of penalty.

13. The appeal is accordingly partly allowed.

(A.M. DHAVALE, J.) **(S.V. GANGAPURWALA, J.)**

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