

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 1**

EXCISE APPEAL NO. 55644 OF 2023

[Arising out of Order-in-Original No. RPR/EXCUS/000/COM/CE/06/2023-24 dated 07.06.2023 passed by the Pr. Commissioner, CGST & Central Excise, Raipur]

STEEL AUTHORITY OF INDIA LTDAppellant

(Bhilai Steel Plant)
Room No. 116, Ispat Bhawan,
Bhilai-490 001, Durg, Chhattisgarh

Vs.

**COMMISSIONER OF CENTRAL EXCISE
& CGST-RAIPUR**Respondent

Dhamtari Road,
Tikrapara, Raipur-492 001
(Chhattisgarh)

Appearance:

Ms. Sukriti Das and Ms. Daliya Singh, Advocates for the appellant

Shri M K Chawda, Authorised Representative for the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 58103 /2024

**Date of Hearing : 20/08/2024
Date of Decision : 29/08/2024**

P. V. SUBBA RAO:

M/s. Steel Authority of India Ltd.¹ filed this appeal to assail the Order in Original dated 7.6.2023 passed by the Principal Commissioner, CGST, Raipur in remand proceedings in pursuance of this Tribunal's Final Order dated 31.5.2017.

2. The appellant manufactures Steel Blooms, Billets, Slabs, TMT Bars, Plates, Angles, Joists, Channels, etc. which fall under

1 appellant

Chapters 72 and 73 of the Schedule to the Central Excise Tariff Act, 1985. During the relevant period, it availed MODVAT credit on the inputs and capital goods which it procured under the erstwhile Central Excise Rules, 1944. Of the goods on which it had availed Capital Goods MODVAT credit were also parts of bins supplied by M/s. Simplex Engineering and Foundry Works², which Simplex had classified under Tariff Sub-Heading 8474 90.

3. Officers of the Directorate General of Central Excise Intelligence investigated the matter and found that the goods were mis-classified by Simplex under Tariff Sub-Heading 8474 90 and they were correctly classifiable under Tariff Sub-Heading 7308 90. They also found that if they were classified under 7308 90, the appellant would not have been able to take capital goods MODVAT credit.

4. Accordingly, DGCEI issued a Show Cause Notice dated 3.9.2002 to Simplex and to the appellant. It was proposed in the SCN to reclassify the bins under 7308 90 and recover from Simplex the differential duty under section 11A of the Central Excise Act, 1944³ along with interest under section 11AB and impose a penalty equal to the duty.

5. The SCN proposed to deny capital goods MODVAT credit amounting to Rs. 1,08,88,166/- and recover it from the appellant under Rule 57U(2) of the Central Excise Rules along

2 Simplex

3 Act

with interest under Rule 57U(8) and impose a penalty of equal amount under Rule 57U(6) read with Rule 173Q.

6. These proposals were initially confirmed by the Commissioner by Order in Original dated 28.11.2005. Aggrieved, both Simplex and the appellant appealed before this Tribunal. The appeal of Simplex was allowed by this Tribunal by Final Order dated 18.8.2015 on limitation as there were no grounds to invoke extended period of limitation.

7. The appellant is a public sector undertaking and as per the directions of the Supreme Court during the period, it had to obtain a clearance from the Committee of Disputes (COD). The appellant filed appeal on 18.7.2006 but assailed only the penalty. This appeal was dismissed by this Tribunal by order dated 28.8.2006 with liberty to seek its revival after obtaining the approval of COD. On 8.9.2015, the appellant filed a miscellaneous application seeking restoration of the appeal on the ground that clearance from COD is no longer required after the judgment of the Supreme Court in ECIL case. The appeal was restored on 31.3.2016 but the appellant was allowed to pursue only the challenge to the penalty under Rule 57U(6). By order dated 6.6.2016, the penalty on the appellant was set aside but not the denial of MODVAT.

8. The appellant appealed to the Chhattisgarh High Court and by Order dated 27.3.2017, the High Court allowed the appeal and directed the CESTAT to decide on merits against denial of MODVAT credit.

9. After considering the submissions of the appellant, by Final Order dated 31.5.2017, this Tribunal confirmed the denial of MODVAT only to the extent of normal period of limitation and set aside the rest of the demand and remanded the matter only for the purpose of quantification. The operative part of this order is as follows:

“10. In view of the above discussion, the demand for reversal of CENVAT credit (sic) is confirmed only to the extent falling within the normal time limit. Rest of the demand is set aside and the matter remanded to the adjudicating authority for re-quantification.

Appeal is disposed of in the above manner.”

10. The Commissioner passed the impugned order in pursuance of this Final order dated 31.05.2017. He noted that the SCN was issued under Rule 57U to deny and recover MODVAT credit along with interest and to impose penalty. He recorded the written submissions dated 8.3.2021 made by the appellant before him and also the submissions made on 26.4.2023 when personal hearing was held. All these pertained to the provisions of Rule 57U only. In the discussions and findings, however, the Commissioner noted that Rule 57U itself was omitted by Notification no. 38/2000-CE (NT) dated 12.5.2000 along with Rules 57A to 57T. These were replaced by new Rules of which Rule 57AH provides for recovery of wrongly availed MODVAT credit. These changes were made well before the issue of SCN in 2002.

11. Since 57U did not apply to the case, the Commissioner proceeded to examine the question of limitation under Rule 57AH. Unlike Rule 57U which provided for a limitation of only 6

months, 57AH provided for a limitation of one year. Since half of the total credit taken fell within one year- the limitation under Rule 57AH he confirmed denial of MODVAT credit of Rs. 54,44,083/-. He relied on the following decisions to hold that if a wrong Rule is quoted in the SCN, it does not vitiate the demand:

a) M/s. Petlad Bulkhidas Mills Co. Ltd. vs. Union of India.⁴

b) J K Steel Ltd. vs. Union of India.⁵

12. Learned counsel for the appellant made the following submissions:

- (a) Confirmation of demand under new Rule 57AH is beyond the scope of the SCN, the earlier OIO dated 28.11.2005 as well as the remand order of this Tribunal dated 31.05.2017;
- (b) Since the department had not appealed against the CESTAT's order, it attained finality and all that the Commissioner had to do was recomputed the demand. He could not have reopened the assessment.

13. Learned authorised representative for the Revenue vehemently supported the impugned order.

14. We have considered the submissions advanced by both sides.

4 **2000(126) ELT 269 (Guj)**
5 **1978 (2) ELT J 355 (SC)**

15. The SCN was issued under Rule 57U and not under Rule 57AH. Admittedly, Rule 57U was omitted by the time the SCN was issued. This issue was never argued at any stage by either side nor had this Tribunal examined if Rule 57U existed at all while passing the final order remanding the matter to the Commissioner. Everyone including this Tribunal proceeded on the presumption that it had existed at that time.

16. Even in the written submissions given to the Commissioner on 8.3.2021, the appellant did not raise this issue. After two years, on 26.4.2023, the Commissioner held a personal hearing when the appellant had appeared and made submissions. It does not appear that at any of these stages, the Commissioner had pointed out to the appellant that their case would be examined under Rule 57AH and not under 57U and had given then an opportunity to examine Rule 57AH and make submissions. Only in the discussions part of the impugned order, the Commissioner held that Rule 57U was already repealed and examined the case under Rule 57AH. We do not find any reason why the Commissioner did not point out that Rule 57U had not existed at the relevant time and therefore, he would be examining the case under Rule 57AH. It is not as if the Commissioner was expediting the matter and in the process was unable to give an opportunity to the appellant. The Final order remanding the matter was passed by this Tribunal on 31.5.2017 and the appellant gave written submissions on 8.3.2021. Thereafter, the Commissioner fixed a personal hearing after two years on 26.4.2023 and passed the impugned order after

another two months on 7.6.2023. There is no conceivable reason for the Commissioner who has taken so long to pass the order to have not even informed the appellant that he would be examining the matter under a new Rule not cited in the SCN and not discussed in any of the previous proceedings and spring it up in his Order.

17. The Commissioner's reasoning is that even if the SCN quotes the wrong Rule, it does not vitiate the proceedings. We agree that if it is only a question of quoting of a wrong Rule in the SCN. All the previous proceedings including in the remanding proceedings before the Commissioner took place under the presumption that the old Rule 57U applies. If it does not, it was incumbent upon the Commissioner to have given the appellant an opportunity to defend its case as per the new Rule. When he received the written submissions in 2021 and fixed the personal hearing in 2023, he must have been well aware of the Rule position. There is no conceivable reason for him to conceal this from the appellant and spring it up in his discussions.

18. We also note that the new Rule 57AH increased the time limit from 6 months to one year and therefore, the liability of the appellant was increased in the impugned order behind the appellant's back without ever giving the appellant even an opportunity to defend itself.

19. To sum up, the SCN was issued under Rule 57U which was not existing at that time and the appellant was never given an opportunity defend against or were even put to notice that their

case will be examined under a new Rule 57AH which increased their liability.

20. In view of the above, the appeal is allowed and the impugned order is set aside with consequential relief to the appellant.

[Order pronounced on **29/08/2024**]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

Tejo