CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>WEST ZONAL BENCH AT AHMEDABAD</u>

<u>REGIONAL BENCH – COURT NO. 03</u>

Excise Appeal No. 12942 of 2018

[Arising out of OIA-CCESA-SRT-APPEALS-PS-240-2018-19 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

M/s R & D Multiple (Metal Cast) Pvt. Ltd ....**Appellant**
A1/17,GIDC, Killa Pardi, Pardi,
Valsad, Gujarat-396125

VERSUS

C.C.E. & S.T.-Surat-i .....**Respondent**
New Buildin, Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat-395001

<u>APPEARANCE</u>

Sh. R.C. George, Advocate for the Appellant
Sh. G. Jha, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

FINAL ORDER NO. <u>A/ 11450 /2019</u>

DATE OF HEARING: 31.07.2019
DATE OF DECISION: 31.07.2019

<u>RAMESH NAIR</u>

The brief facts of the case are that the appellant have cleared the exempted goods and paid the amount as required under Rule 6 of Cenvat Credit Rules, 2004 @ 5% during month of March 2012. By Notification No. 18/12-CE (NT) dated 17.03.2012. The rate of amount to be paid under Rule 6 enhanced from 5% to 6%, accordingly, the demand of differential duty was raised. The adjudicating authority as well as Ld. Commissioner (Appeals) held that appellant is liable to pay amount under Rule 6 @ of 6% from the date of Notification i.e. 17.03.2012.

2. Sh. R.C. George, Ld. Counsel appearing on behalf of the appellant submits that though Notification for enhancement of the rate from 5% to 6% was issued on 17.03.2012, but in the preamble of the Notification, the amendment is effective from 01.04.2012, therefore, the amount paid during the month of March, 2012 @ 5% is correct and legal. On query from the bench, he fairly accept that this particular issue

was not raised before both the lower authorities as the same was noticed by the appellant at the time of filing of the appeal before this Tribunal.

3. Sh. G. Jha Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that the appellant either at the adjudication stage or Ld. Commissioner (Appeals), has not raised this issue.

4. Heard both the sides and perused the records. I find that the vital point raised by the appellant before this Tribunal that the demand for the month of March is not sustainable for the reason that the Notification though issued on 17.03.2012 but it was effective from 01.04.2012, therefore, the appellant made the payment during March, 2012 @ 5% is absolutely legal and correct. Even the Revenue while issuing the SCN has not noticed that the enhanced rate of 6% is effective from 01.04.2012 and not from the date of Notification. Therefore, being an absolutely clear position of the amended Notification No. 18/12-CE (NT), the enhanced date is applicable only from 01.04.2012 and not from date of notification i.e. 17.03.2012.

5. Accordingly, the demand raised by the department is not sustainable and the same is set aside. Appeal is allowed.

(Dictated & pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Seema