CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 13859 of 2014-DB

[Arising out of Order-in-Original/Appeal No KDL-CUSTM-000-APP-348-14-15 dated 11.06.2014 passed by Commissioner of CUSTOMS-KANDLA]

C.C.-Kandla **...Appellant**

Custom House,
Near Balaji Temple,
Kandla, Gujarat

VERSUS

Shree Cement Ltd **...Respondent**

Bangur Nagar,
P B No. 33,
Beawar,
Rajsthan

APPEARANCE:
Shri Kalpesh P. Shah, Assistant Commissioner (AR) for the Appellant
Shri. P. D. Rachchh, Advocate for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), RAJU
HON'BLE MEMBER (JUDICIAL), SOMESH ARORA

FINAL ORDER NO. A/10430 / 2023

DATE OF HEARING/ DECISION: 07.03.2023

RAJU

This appeal has been filed by Revenue against order of Commissioner (Appeals) setting aside demand of Customs Duty.

2. Learned AR relied on the appeal memorandum. It is seen from the facts of the case that the respondents had utilized DEPB Scripts for payment of "Clean Energy Cess" part of the CVD. Revenue has sought to disallow the utilization of DEPB script for the said purpose and the original Adjudicating Authority had confirmed the demand. The Commissioner (Appeals) has however set aside the said order. Aggrieved by the said order Revenue is in appeal before Trial Court.

3. Learned Counsel appearing on behalf of the Respondent relied on the impugned order. He pointed out that the provisions invoked in the appeal memorandum are not applicable to the instant case.

4. We have carefully considered the rival submissions, we find that in this appeal the dispute involved is if the respondent could have used the DEPB Scrips for payment of Clean Energy Cess part of contravaling duty under Section 3(1) of the Customs Tariff Act. It is seen that Commissioner (Appeals) passed detailed order giving the reasoning as follows:

> *"8. Levy of additional duty under section 3 (1) of the Customs Tariff Act is equivalent to the duty of excise, yet it remains duty of customs. Since cess is leviable as duty of excise, if it is meant for goods produced in India, to be paid as duty of excise, it was payable either in cash or possibly through utilization of CENVAT credit or both. In these situations, the Government has taken a decision that cess, when paid on goods produced in India, as duty of excise, must be paid in cast in the letter of TRU dated 24.06.2010, where it was mentioned that this amount is only payable through cash and not Cenvat credit and that amendment in Cenvat credit Rules were being made. it only and only referred to the restrictions on payment through Cenvat credit for goods produced in India and liable to duty of excise. However, the Customs duty is never payable through CENVAT credit. Cess is equivalent to duty of excise and not a duty of excise per se. It can be paid, as additional duty of customs levied under section 3(1) of the Customs Tariff Act. 1975, either in cash or debit in script like DEPB (which is also called payment through DEPB credit). It cannot be construed to mean that any restrictions were also imposed on payment through DEPB scrip. It that was the intention of the government in respect of clean energy cess levied as additional duty of customs levied under section 3(1) of the Customs Taritt Act. 1975, such restrictions would have been incorporated in the Notification governing DEPB scheme. Le, Notification No. 97/2009-Cus. Supra. However, there is no restriction under DEPB scheme or Notification No. 97/2009-Cus. Supra, to this effect. Without appreciating the correct position of law, I find that the impugned order is only referring to the Cenvat credit Rules which is completely whimsical and capricious where customs duty payment is d subject matter."*

It is also seen that the Commissioner (Appeals) has allowed the appeal on the ground of limitation as well. Revenue in its appeal has relied on the restriction appearing in the 3rd proviso to Sub-rule (4) of Rule 3 of the CENVAT Credit Rules, 2004, which prohibits utilization of CENVAT Credit for the purpose of payment of "Clean Energy Cess". The said proviso reads as under:

> *"Provided also that the CENVAT Cerdit of any duty specified in sub-rule (1) shall not be utilized for*

> *payment of the Clean Energy Cess leviable under Section 83 of the Finance Act, 2010 (14 of 2010)"*

It is seen that the review order also relied on CBEC instruction issued vide F. No.354/72/2010-TRU dated 24.06.2010, which also essentially disallow the utilization of Cenvat Credit for the purpose of payment of "Clean Energy Cess" leviable under Section 83 of the finance Act, 2010. It is seen that the CENVAT Credit rules are irrelevant for the purpose of availing the benefit of DEPB Script in paying the contravening duty. The said provision of CCR can by no means prohibit utilization of DEPB Scripts. In this regard, we do not find any merit in the appeal filed by the revenue and the same is dismissed.

(Dictated & Pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PALAK