IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/56438,56439/2013-EX[DB]

(Arising out of Order-in-Original No.45/Commr./Meerut-I/2012 dated 30/11/2012 passed by Commissioner, Customs, Central Excise, Meerut-I)

M/s Bakewell Agro Ltd.
(In Appeal No.E/56438/2013-EX[DB])

Shri Firoz Malik
(In Appeal No.E/56439/2012-EX[DB]) **...Appellants**
Vs.

Commissioner, Central Excise, Meerut-I **...Respondent**

Appearance:

Shri Alok Arora, (Advocate) for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 10/12/2018
Date of Pronouncement : 28/01/2019

FINAL ORDER NO.**70143-70144 / 2019**

Per: Archana Wadhwa

The appellant is engaged in the manufacture of Biscuits falling under Chapter 19 of Central Excise Tariff Act, 1985.

2. It appeared that during the period from March 2008 to June 2008, the appellant defaulted in payment of duty. As per the appellants, subsequently they discharged the entire duty by using the cenvat credit available with them. Revenue

is not accepting such utilization of cenvat credit and proceedings stand initiated against them for payment of duty in cash. The said proceedings culminated into impugned order passed by the Lower Authorities confirming the duty and imposing the penalties.

3. After hearing both the sides duly represented by learned Advocate, Shri Aalok Arora on behalf of the appellants and learned A.R. Shri Sandeep Kumar Singh on behalf of the respondent, we find that the legal issue required to be decided in the present appeals is as to whether for payment of duty during the default period cenvat credit can be used or not. We find that the said legal issue stands decided by the Tribunal in the case of M/s Bekewell Agro Ltd. and others vide Final Order No.72503-72508/2018 dated 28.09.2018. It stands held that cenvat credit is available for discharge of duty liability subsequent to the period of default in terms of provisions of Rule 8 (3A).

4. As such it is seen that the issue stands decided in favor of the assessee, however, there seems to be some dispute regarding payment and we would like to remand the matter to the Original Adjudicating Authority for verification of such payments made by the assessee. Accordingly, we set aside the impugned order and remand the matter to Original Adjudicating Authority for verification etc. and to redecide the

issue in the light of the law declared by Tribunal in the above referred case.

5. Both the Appeals are disposed of in above terms.

(Pronounced in Court on 28/01/2019)

Sd/-	Sd/-
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Nihal