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

APPEAL No.E/70748/2017-EX[DB]

(Arising out of Order-in-Appeal No. 214-CE/APPL/LKO/2017 dated 06/09/2017 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

M/s Raco Agro Chem (P) Ltd. **Appellant**

Vs.

Commissioner of Central Excise & S.T., Lucknow **Respondent**

Appearance:

Shri Kapil Vaish, Chartered Accountant for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 31/01/2018
Date of Decision : 31/01/2018

FINAL ORDER NO-70726/2018

Per: Anil Choudhary

The present appeal is filed by the appellant against Order-in-Appeal No. 214-CE/APPL/LKO/2017 dated 06/09/2017 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow.

2. The brief facts of the case are that the appellant was registered with the Department and engaged in the manufacturing activity of pesticides falling under Chapter Heading No.3808 of the First Schedule to the Central Excise

Tariff Act, 1985. The appellants were availing facility of Cenvat credit on inputs. During the course of audit by the Department, it was revealed that the appellant had availed credit of Rs,6,00,591/- on phenol on the basis of dealer's invoice instead of proportionate credit amounting to Rs.1,82,827/-. Thus, the appellant had taken excess credit of Rs.4,17,764/-. Further, the appellant had taken 100% credit of Rs.43,260/- whereas only 50% of the same was available to them as per law. Thus, credit of Rs.4,39,394/- was irregularly availed by them. However, on being pointed out by the Department, the excess credit was reversed by the appellant. Accordingly, SCN dated 30.12.2015 was issued proposing to demand the differential duty along with interest and penalty under Rule 15 read with Section 11AC of the Act. The said SCN was adjudicated and the proposed demands were confirmed and appropriated. Penalty of Rs.2,19,697/- had been imposed. Against the said order, appellant-assessee filed appeal before the Commissioner (Appeals) mainly on the issue of penalty. By the impugned order, learned Commissioner (Appeals) was pleased to reduce the penalty to Rs.50,000/-. Against the aforesaid imposition of penalty, appellant-assessee has filed this appeal.

3. The learned Counsel for the appellant submitted that appellant had mistakenly taken excess Cenvat credit on inputs & capital goods. On being pointed out, they

immediately reversed the credit much before the issuance of SCN. He further submitted that there is no case of fraud, suppression, etc. and prayed for non imposition of penalty on them. He further relies on the decision of this Tribunal in the case of M/s Prayas Casting Ltd. Vs CCE, Vadodara reported at 2013 (29) STR 171 (Tri.-Ahmd.).

4. Learned A.R. for revenue relies on the impugned order.

5. Having considered the rival submissions, I find that the appellant had reversed the excess credit before the issuance of SCN. Further, I find that the case is squarely covered by the precedent decision of this Tribunal in the case of M/s Prayas Casting Ltd. (supra). For further appreciation, I am reproducing para-5 of the said order, as under:-

> ***"5.*** *On perusal of the records, we find that the appellant had availed Service Tax credit of Rs. 50,239/- which is the value of the invoice instead of Service Tax paid of Rs. 5,704/-. The said credit was availed on 12-7-2006. When the records of the assessee were scrutinized, Audit party pointed out the error of availment of excess Cenvat credit. The assessee reversed the inadmissible Cenvat credit on 5-3-2007, but did not pay the interest. Subsequently, the interest was also paid by the assessee. The stand of the assessee before the lower authorities that it was inadvertent mistake and there was no mala fide in availing the ineligible excess credit. On perusal of the Show Cause Notice, we find that the Show Cause Notice only alleges the violation of provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11AB of Finance Act, 1994 (sic). The said Show Cause Notice does not allege any mala fide on the appellant for availment of excess credit. In our view, having reversed the ineligibly availed the Cenvat credit on being pointed out by the Audit party, the appellant has shown their bona fide on admitting the error. In view of this, we are of the view that the impugned order which*

> *upholds the imposition of penalty on the appellant is liable to be set aside and we do so."*

Accordingly, by following the above said decision of this Tribunal, I allow the appeal and set aside the impugned order on the issue of imposition of penalty on appellant.

6. Accordingly, appeal filed by appellant is allowed with consequential relief.

(Dictated in Court)

(Anil Choudhary)
Member (Judicial)

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