IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
ROM Application No. E/ROM/70061/2018
APPEAL No. E/70644/2017-EX[SM]

(Arising out of Order-in-Appeal No.135/CE/APPL/KNP/2017 dated 30/05/2017 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Kanpur)

Commissioner of Central Excise, Kanpur **Appellant**

Vs.

M/s Kanpur Plastipack Ltd. **Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi (Asstt. Commr.) AR for Appellant
Shri Ashutosh Agarwal (Advocate) for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing : 15/05/2018
Date of Decision : 15/05/2018

FINAL ORDER NO. – 70898/2018

Per: Archana Wadhwa

The present Miscellaneous Application stands filed by the Revenue for re-calling of Final Order No.71374/2017 dated 14/11/2017 vide which the appeal filed by the Revenue was dismissed under litigation policy. It stands brought to our notice that the amount involved was to the tune of Rs.41 lakhs and as such the appeal was not covered under the litigation policy.

2. Appreciating the above, I recall the said order dated 14/11/2017 and proceed to decide the appeal of the Revenue.

3. The issue involved as to whether the respondent is liable to pay an amount in terms of Rule 6(3) of the Cenvat Credit Rules on the value of the exempted goods, as they had availed Cenvat credit in respect of common inputs used in the manufacture of dutiable as also exempted final product. The Commissioner (Appeals) has extended relief to the respondents by observing that the assessee had already reversed the proportionate input service credit, pertaining to the exempted goods totaling amounting to Rs.4,24,734/- along with interest of Rs.1,01,862/- and penalty of Rs.1,06,107/-. He has relied upon Tribunal decisions and arrived at finding that wherever proportionate reversal of the credit has been done, the same would amount to as if no credit was ever availed and as such no requirement of further reversal in terms of Rule 6(3). Reference stands made by him to the Tribunal decisions in the case of Madura Steel Industries Pvt. Ltd. reported 2015-TIOL-567-CESTAT-MAD; Global Pharatech vs. CCE Chennai-2011 (247) E.L.T. 413 (Tri.-Chennai) and Burn Standard Co. Ltd. vs. CCE 2010 (262) E.L.T. 786 (Tri.-Chennai).

4. Revenue in their memo of appeal have nowhere disputed the fact that the credit already stands reversed by the assessee. They are also silent on the applicability of the ratio of law declared in the above referred judgments. The grounds of appeal simplicitor reiterated the applicability of

provisions of Rule 6(3) of Cenvat Credit Rules without appreciating the fact of reversal of Cenvat credit.

Inasmuch as the issue stands decided by various decisions referred to and relied upon by the Commissioner (Appeals), I find no justifiable reasons to interfere in the impugned order. Accordingly, Revenue's appeal is rejected.

(Dictated and Pronounced in Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks