

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

APPEAL No. E/188/2010-EX[DB]

(Arising out of Order-in-Original No. 48/COMMISSIONER/M-II/2009 dated 18/11/2009 passed by Commissioner of Customs & Central Excise, Meerut-II)

M/s Shri Rathi Steels Ltd.

Appellant

Vs.

Commissioner of Customs & Central Excise, Meerut-II

Respondent

Appearance:

Shri Bipin Garg (Advocate) & Ms. Stuti Saggi (Advocate)
Shri Rajeev Ranjan (Joint Commr.) AR

for Appellant
for Respondent

CORAM:

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

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 08/05/2018
Date of Decision : 08/05/2018

FINAL ORDER NO. 71019/2018

Per: Anil G. Shakkarwar

Present appeal is arising out of Order-in-Original No. 48/Commissioner/M-II/2009 dated 18.11.2009 passed by Commissioner of Customs and Central Excise, Meerut-II.

2. Brief facts of the case are that the appellant were manufacturers of MS Bars falling under Chapter 72 of first schedule to Central Excise Tariff Act, 1985. The appellant were availing facility of Cenvat Credit. The appellant were

clearing their final product to various SEZ Developers during the period from 17.05.2008 to 15.10.2008 at nil rate of duty. Further they were not reversing Cenvat Credit involve in the said final product nor paying amount as required by sub Rule (3) of Rule 6 of Cenvat Credit Rules. Therefore, it appeared to Revenue that in terms of said sub Rule (3) of Rule 6 appellant were required to pay Rs.78,95,382/- in respect of clearances of final product at nil rate of duty to SEZ Developers during the period from 17.05.2008 to 15.10.2008 under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11 A of Central Excise Act, 1944. On contest the issue was adjudicated through impugned Order-in-Original. The appellant contested before the Original Authority that in view of Clause V of sub Rule (6) of Rule 6 of Cenvat Credit Rules, 2004 appellants were not required to pay the said amount which was sought to be paid by them through the show cause notice dated 02.04.2009. They further contended that they were covered by Clause (i) of sub Rule (6) of Rule 6 of Cenvat Credit Rules, 2004 since they supplied the goods to SEZ Developers and supplies to SEZ were exempted under sub Rule (6) *ibid* from the requirement of sub Rule (1) of said Rule 6. The Original Authority did not appreciate the contentions and confirmed the demand and imposed equal penalty. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the learned counsel for the appellant. Learned counsel has submitted that under said Clause (i) of sub Rule (6) of Rule 6 of Cenvat Credit Rules initially the clearances made to SEZ units were not required to follow the provisions of sub Rule (1) of Rule 6 of Cenvat Credit Rules, 2004. The said provision was amended through Notification No. 50/2008-CE (NT) dated 31.12.2008 wherein the said Clause (i) was amended to cover developer of the SEZ. Due to the said amendment w.e.f. 31.12.2008, the goods cleared at nil rate of duty to SEZ developers were entitled to avail Cenvat Credit of duties paid on input or input services going into manufacture of such goods. He has further submitted that Hon'ble High Court of Chhattisgarh in the case of Union of India vs. Steel Authority of India Ltd. reported at 2013 (297) ELT 166 (Chhattisgarh) had ruled in Paras 51 & 52 of the said order that the said amended rule is merely clarificatory in nature and said substituted sub Rule 6(6)(i) is enforced from the date of Cenvat Credit Rule, 2004 came into force. He has further submitted that the said ruling by Hon'ble High Court of Chhattisgarh was followed by Hon'ble High Court of Punjab & Haryana in the case of Commissioner of Central Excise vs. Dee Development Engineers Pvt. Ltd. reported at 2016 (339) ELT 560 (P & H). He has further submitted that by now it has become a rule that the amended provision, amended through said Notification dated 31.12.2008 is having retrospective effect and that in the present case the clearances were to SEZ developers for the period from 17.05.2008 to 15.10.2008 and that in view of said amended provision amount

confirmed through impugned Order-in-Original is not sustainable.

4. The learned AR has submitted that CBEC Circular No. 267/52/2008 – CX dated 07.01.2009 clarifying that the said amended provision, amended through said Notification dated 31.12.2008 was prospective.

5. Having considered the rival contentions and on perusal of records we find that there have been clear rulings by Hon'ble High Courts that the said amendment, amended through said Notification dated 31.12.2008 is having retrospective effect. Therefore, said amended provision was applicable to the clearances covered by the impugned Order-in-Original. Once the said provisions become effective for the period of show cause notice the Cenvat Credit availed by the appellant which has gone into the goods manufactured which were cleared at nil rate of duty and supplied to SEZ developers for the period from 17.05.2008 to 15.10.2018 become lawful credit. Therefore, the impugned Order-in-Original is not sustainable. We, therefore, set aside the impugned Order-in-Original and allow the appeal. Appellant shall be entitled for consequential relief as per law.

(Dictated and pronounced in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)