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

APPEAL Nos.E/70528 & 70529/2018-EX[SM]

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1386 & 1387-17-18 dated 30/10/2017 passed by Commissioner of Central Tax Commissionerate (Appeals), Noida)

M/s Simbhaoli Sugar Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate for Appellant
Shri Gyanendra Kr. Tripathi, Asstt. Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 13/07/2018
Date of Decision : 13/07/2018

FINAL ORDER NOs-**71549-71550 / 2018**

Per: Anil G. Shakkarwar

The present appeals are arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1386 & 1387-17-18 dated 30/10/2017 passed by Commissioner of Central Tax Commissionerate (Appeals), Noida. The short issue involved in the present appeals is whether interest and penalty are required to be paid by the appellants on such Cenvat credit which was reversed before utilization.

2. Heard the parties and considered the submissions.

3. On perusal of facts on record, I find that revenue entertained a view that appellant had availed Cenvat credit on civil work and the same was not admissible. The demands were raised through the issuance of show cause notices. The proposed demands were confirmed and appellants were directed to pay service tax along with interest. Further, penalty was imposed. Commissioner (Appeals) has not interfered in the order of Original Adjudicating Authority. I find that before the issuance of show cause notice appellant had reversed the Cenvat credit. Further, Cenvat credit was reversed before utilization. Therefore, as pleaded by learned counsel that the ruling by Hon'ble Allahabad High Court in the case of Commissioner of Customs & Central Excise, Meerut-II Vs M/s Rana Sugar Ltd. reported at 2010 (253) E.L.T. 366 (All.) is squarely applicable in the facts of the present case. Through the said ruling the Hon'ble Allahabad High Court had ruled that if Cenvat credit is reversed before utilization then there is no need for payment of interest on availment of such Cenvat credit and if the show cause notice is issued after reversal of Cenvat credit then penalty is not to be imposed.

4. Therefore, by following the said ruling of Hon'ble Allahabad High Court in the case of M/s Rana Sugar Ltd. (supra), I set aside the impugned order and allow both the appeals filed by the appellant.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

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