IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No.E/1451/2012-EX[DB]

(Arising out of Order-in-Original No.15/COMM./M-II/2011-12 dated 29/03/2012 passed by Commissioner, Customs & Central Excise, Meerut-II)

M/s Kesar Enterprises Ltd. **Appellant**

Vs.

Commissioner, Customs & Central Excise, Meerut-II **Respondent**

Appearance:

Shri Kapil Vaish (CA) for Appellant
Shri Rajeev Ranjan, Additional Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 09/08/2018
Date of Decision : 09/08/2018

FINAL ORDER NO.71988/2018

Per: Archana Wadhwa

As per facts on record appellant is engaged in the manufacture of sugar. Their factory was visited by the Central Excise officers on 23-26/02/2010 who conducted various checks and verifications. Statement of one Shri Muthu Kumar, General Manager was recorded wherein he deposed that certain Iron and Steel items in respect of which they have availed the credit, were not actually used by them. A subsequent statement of one Shri Sandeep Singh, assistant manager was recorded on 25.02.2010 wherein he deposed that all the entries in the Cenvatable record are made based upon the invoices received by them and as such the entire credit has been accordingly availed. Further, shortage of sugar as also scrap involving duty of Rs.3,53,301/- were found.

2. Learned Advocate appearing for the appellant submits that they had reversed the entire credit involved in Iron and Steel items to the extent of Rs.24,14,086/- as also the duty of Rs.3,53,301/- found relatable to the shortages of sugar and scrap. Inasmuch as the said demands are on the lower side, they are not contesting the same and the only contest is to imposition of penalties on the said two grounds. Elaborating on his argument Learned Advocate submits that there is no evidence worth relying produced by the Revenue to show that the credit has been availed by them in respect of Iron and Steel items without receipt of the same or without putting the same to use. Similarly, there is no evidence to show that the sugar found short was cleared by them clandestinely. Same is the case with the alleged sale of scrap. Similarly, he submits that the sale of scrap has been done by reflecting the same in the statutory record but non-payment of duty was a mistake on their part. Merely, because they have admitted to pay the duties, as the amount involved were on the lower side, the imposition of penalty is not justified.

3. After hearing Learned AR for the Revenue we note that admittedly the entire case of the Revenue for denial of credit or for confirmation of demand of duty on short found sugar is

based upon the statement of only one Shri Muthu Kumar which is contrary to the statement of Shri Sandeep Singh. There is no other corroborative evidence to establish the said allegations. As the appellant is not contesting the said confirmations having deposited the same along with depositing of interest, we uphold the same but set aside the penalties imposed upon them on the said grounds.

4. The major part of the duty to the extent of Rs.1.73 crores approx is in respect of sale of Bagasse and Press mud, which has been cleared by the appellant as an exempted goods. The demand stands raised in terms of provisions of Rule 6(3) of Cenvat Credit Rules. We note that the issue is no more res-integra and stands covered by the Supreme Court's judgment in the case of Union of India V/s DSCL Sugar LTD. reported as 2015 (322) E.L.T. 769 (S.C.). As such by following the above decision, we set aside the said demand along with setting aside of penalties on the said ground.

5. The appeal is disposed of in above terms.

(Pronounced & Dictated in Court)

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

Sd/-
(Archana Wadhwa)
Member (Judicial)

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