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

APPEAL No. E/70122/2017-EX[DB]

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-APP-449-16-17 dated 20/10/2016 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Gaurang Products P. Ltd.	**Appellant**
Vs.	
Commissioner of Central Excise, Ghaziabad	**Respondent**

Appearance:

None	for Appellant
Shri Pawan Kumar Singh, Supdt. AR	for Respondent

CORAM:

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

Date of Hearing	:	24/09/2018
Date of Decision	:	24/09/2018

FINAL ORDER NO **72352 / 2018**

Per: Archana Wadhwa

On matter being called nobody appeared. Accordingly, we have heard the learned AR and have gone through the impugned orders.

2. As per facts on record appellant is engaged in the manufacture of MS Tubes and Pipes falling under Chapter 73 of the First Schedule to the Central Excise Tariff Act, 1985. The dispute in the present appeal relates to availment of

Cenvat Credit of duty paid on the welding electrodes used for repair and maintenance of the machinery. Another dispute relates to the fact as to whether the inspection and weighment charges recovered by the appellant from their customers would become a part of the assessable value or not.

3. By denying both above legal grounds to the appellant, the Lower Authorities have confirmed the demand to the extent of Rs.10,55,267/- alongwith confirmation of interest and imposition of penalty. We note that the Commissioner (Appeals) has rejected the appeal on the point of limitation by observing that there was one day delay in filing the appeal before him and no COD stand filed by the assessee. Inasmuch as the delay was only of one day and both the issues are covered in favour of the appellant, we proceed to decide the appeal itself in respect of remanding the matter to Commissioner (Appeals).

4. As regards the availability of Cenvat Credit in respect welding electrodes, the issue stands settled by various decisions of the High Courts. The same stands followed by the Tribunal in the case of Kisan Sahkari Chini Mills Ltd. vs. Commissioner of Central Excise, Meerut-II reported at 2017 (352) ELT 215 (Tri. All.) laying down that welding electrodes used for joining of coils is an admissible cenvatable item. As

such by following the same we set aside the confirmation of demand on the said count.

5. As regards the inclusion of inspection charges and weighment charges, being recovered by the appellant from their customers on actual basis we note that the appellant has taken a categorical stand before the Authorities below that they have their own quality testing unit in their factory and the expenses incurred in respect of the same are already a part of the assessable value of their final product. They are clearing their goods to the Private Parties as also to the Government Departments against various tenders. It is only in respect of supplies made to the Government Departments, who insist on further inspection of the goods that the said inspection is being undertaken and inspection charges are being recovered by the appellant from their customers on actual basis.

Tribunal in the case of Classic Polytubes Pvt. Ltd. vs. Commissioner of C. EX., Lucknow reported at 2016 (336) ELT 180 (Tri. All.) has held that such inspection is not mandatory and is undertaken at the option of the buyers, the same would not be a part of the assessable value of the final product. As such by following the said decision, we find no merits in the Revenue’s stand. Accordingly, the demand confirmed on the said ground is also set aside.

6. In view of the foregoing, impugned order is set aside and the appeal is allowed with consequential relief.

(Dictated and pronounced in Court)

Sd/-	**Sd/-**
Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Ankit