IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

E/717/2012-EX[DB]

(Arising out of Order-in-Original No.05/COMMR./GZB/2011-12 dated 28.12.2011 passed by Commissioner, Customs, Central Excise & Service Tax, Ghaziabad.)

M/s. Rathi Super Steel Ltd.

…APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Ghaziabad

RESPONDENT (S)

APPEARANCE

Shri Rajesh Chhibber (Advocate) for the Appellant (s)
Shri Pawan Kumar Singh (Supdt.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 26.09.2018

FINAL ORDER NO.72490/2018

Per Mrs.Archana Wadhwa :

The appellant are manufacturer of TMT bars. They avail cenvat credit of duty paid on inputs and capital goods as per provisions of Cenvat Credit Rules, 2004. During the period of dispute i.e. from October 2006 to December 2008, they had supplied TMT bars without payment of duty to SEZ unit as well as SEZ developers. Since common cenvat credit availed inputs had been used in respect of manufacture and clearance of the goods without payment of duty to SEZ unit and SEZ developer as well as to DTA on payment of duty, the Department was of the view that in respect of the goods supplied to SEZ units and SEZ developers, the appellant were required to pay an amount under

Rule 6(3)(b) of Cenvat Credit Rules, 2004 at 10% of sale value of the goods, as the appellants while manufacturing both dutiable and exempted final products, had not maintained separate accounts and inventory of inputs used in the manufacture of dutiable and exempted products. After issue of show cause, the Commissioner vide order in original dated 28.12.2011 confirmed the duty of Rs.2,33,84,336/- under Rule 14 of Cenvat Credit Rules, 2004 along with interest thereon and imposed penalty of equal amount on the appellant under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The duty demand was confirmed by invoking extended period under the proviso to Section 11AC of the Central Excise Act, 1944. Against the order of Commissioner, this appeal has been filed.

2. Heard both the sides.

3. We find that the issue is no more *res integra* and stands settled by the Tribunal in the case of Sujana Metal Products Ltd. v. C.C.E., Hyderabad reported in 2011 (273) ELT 112 (Tri.-Bang.), wherein, after taking into account the provisions of SEZ Act, 2009 has held that the amendment made with effect from 31.12.2008 has to be treated as retrospective and that even prior to 31.12.2008 supplies to SEZ were covered by the provisions of sub-rule (6) of Rule 6 of Cenvat Credit Rules as the same are covered by the term definition of 'Export' as defined in SEZ Act. The same view has been taken by the Tribunal in the case of Sujako Interiors Pvt.Ltd. v. C.C.E., Ahmedabad reported in 2011 (268) ELT 505 (Ahmd.); that in view of this, the impugned order is not correct. The said decision in the case of Sujana Metal Products Ltd. stands upheld by the Hon'ble Andhra Pradesh High Court, when appeal filed by the Revenue was dismissed reported as Commissioner v. Sujana Metal Products Ltd. [2016 (342) E.L.T. A-115 (A.P.)]. Hon'ble Karnataka High Court in the case of Principal C.C.E., Bangalore-I v. Power Control Equipments (Unit-

II) [2016 (336) E.L.T. 284 (Kar.)] who has held to the same effect. Inasmuch as the issue is decided in favour of the assessee, we set aside the impugned order and allow the appeal with consequential relief.

(Dictated and pronounced in the open Court.)

SD/	SD/
(ANIL G. SHAKKARWAR)	**(ARCHANA WADHWA)**
MEMBER(TECHNICAL)	**MEMBER (JUDICIAL)**

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