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

APPEAL No. E/70854/2018-EX[SM]

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1945-17-18 dated 27/03/2018 passed by Commissioner (Appeals), Customs & Central Tax, Noida)

M/s Unitherm Inductoweld (India) Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida-I **Respondent**

Appearance:

Request for Adjournment for Appellant
Shri Shiv Pratap Singh (Dy. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing : 11/03/2019
Date of Decision & Pronouncement : 15/03/2019

FINAL ORDER NO. - **70605/2019**

Per: Archana Wadhwa

After rejecting the request for adjournment, I proceed to decide the appeal itself inasmuch as a short issue is involved.

2. As per facts on record, the appellant is engaged in the manufacture of H. F. Welder & Parts, Control Panel and Parts etc. In the manufacture of the said goods the appellant is regularly importing parts of Control Panel

and was availing the benefit of Cenvat credit of duty paid thereon. The appellant was also clearing the said imported parts as inputs "as such," to their customers and the credit availed by them was being reversed.

3. However, as an audit objection, Revenue entertained a view that such clearance of imported inputs amounts to trading which was an exempted activity and as such, the appellant was required to pay a particular percentage of the value of the same in terms of Rule 6(3) of Cenvat Credit Rules, 2004. Accordingly, show cause notice dated 23/02/2015 was issued to them proposing confirmation of Rs.3,30,540/-, for the period 01/04/2011 to November, 2014 alongwith proposal to confirm the interest and imposition of penalties. The said show cause notice stands adjudicated by the Additional Commissioner, who vide his order dated 29/02/2016 held that clearance of the inputs, on which the assessee has availed the Cenvat credit, required reversal of the credit in terms of the provisions of Rule 3(5) of Cenvat Credit Rules, 2004. As the appellant has already reversed the credit on such clearance the provisions of Rule 6 would not be applicable. He, accordingly, vacated the show cause notice.

4. Being aggrieved with the said order, Revenue filed an appeal before Commissioner (Appeals), who accepted the same and reversed the order of the Original Adjudicating Authority. Hence the present appeal.

5. On going through the impugned order, it is seen that Commissioner (Appeals) has otherwise admitted that clearance of the inputs "as such" would invite invocation of the provisions of Rule 3(5) of Cenvat Credit Rules. However, he has observed that the appellant was importing excess quantity of such inputs, which was being cleared by them subsequently and such activity has to be held as trading activity.

6. I find no merits in the above reasoning of Commissioner (Appeals). Admittedly, inputs, when cleared "as such," require reversal of Cenvat credit availed in respect of the same, in terms of the provisions of Rule 3(5) of Cenvat Credit Rules. There is neither any restriction nor any reference to the volume of the inputs cleared, in the said Rule 3(5). In the absence of any restriction on the quantity of the inputs to be cleared on reversal of credit, the observation and findings of Commissioner (Appeals) amounts to introducing the said legal provisions on his own. When Rule provides for

clearance of the inputs on reversal of credit, irrespective of the quantum of the same, the applicability of the same cannot be denied to the assessee.

In the present case the appellant has admittedly paid back the credit so availed by them and as such have satisfied the provisions of Rule 3(5) of Cenvat Credit Rules. In this scenario, findings arrived at by Original Adjudicating Authority are proper and accordingly the impugned order is set aside and appeal is allowed by restoring the Order-in-Original.

(Pronounced in Court on – 15/03/2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks