CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70627 of 2018-Single Member

(Arising out of Order-in-Appeal No.113/Comm./(Audit)/CE/APPL./KNP/2018 dated 23/02/2018 passed by Commissioner (Audit) Central Tax & Central Excise, Kanpur)

M/s Jai Jagdamba Malleable Pvt. Ltd. **.....Appellant**

(A-13, 14, Bijoli Industrial Area, Jhansi-284135)

VERSUS

Commissioner (Audit) of Central Goods

& Service Tax, Kanpur **....Respondent**

(7/117 Sarvodaya Nagar, Kanpur)

APPEARANCE:

Shri Vaibhav Dixit, Advocate for the Appellant
Shri Shiv Pratap Singh, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO.- 71213 / 2019

Date of Hearing : 27 June, 2019
Date of Decision : 27 June, 2019

PER: ARCHANA WADHWA

After hearing both the sides, I find that the appellants are engaged in the manufacture of ingots and availed Cenvat credit on duty paid on moulds. The said moulds were treated by the appellant as inputs and the entire credit of duty paid on the same was availed by them in the Financial Year of receipt of the said moulds.

2. Whereas moulds in question are required to be treated as capital goods and 50% of the duty paid on the same is available

as credit in the first Financial Year and the balance 50% is to be taken in the subsequent Financial Year. The appellant is not disputing the said fact and are ready to pay the interest for the early availment of the credit. The only challenge in the present appeal is penalty of Rs.2 lakhs. In the absence of any evidence to show that such entire 100% credit was availed by the appellant with any *mala fide*, I agree with learned advocate that the same was availed by treating the moulds as input. Otherwise also, I find that entire credit availed by the appellant was reflected in the RG-23A Part-II records. As such, there was no suppression or misstatement on their part so as to invoke penal provision.

3. In view of the above, while confirming interest amount, I set aside the penalty imposed upon the appellant and allow the appeal to that extent.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks