CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No. 71386 of 2018-[SM]

(Arising out of Order-in-Appeal No.406-CE/APPL/LKO/2018 dated 31/07/2018 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

M/s Metal Distributors, **.....Appellant**

(C-31, Jatni Ka Bagh, Jeoni Mandi, Agra-282003)

VERSUS

Commissioner of Central Excise, **....Respondent**

(Agra)

<u>APPEARANCE:</u>

Shri Anuj Agarwal, Advocate for the Appellant
Shri Santosh Kumar Agarwal, Authorised Representative for the Respondent

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

FINAL ORDER NO-71555 / 2019

DATE OF HEARING : 08 August, 2019
DATE OF DECISION : 08 August, 2019

PER: ARCHANA WADHWA

The challenge in the present appeal is to penalty of Rs.2,88,656/- imposed upon the appellant, who is a second stage dealer. The said penalties stands imposed on the allegations and findings that the appellant has procured raw materials from 6 first stage dealers, being operated by one Shri Anil Gupta, without the actual movement of the raw material and has fraudulently passed on the Cenvat credit to M/s Benara Udyog.

2. Without going into detailed allegations, it is seen that identical proceedings were initiated against the main first stage dealer. Their appeal are allowed by the Tribunal vide its Final Order Nos.51800-51808 of 2018 dated 11.05.2018, setting aside the penalties imposed upon them by arriving at a finding that the case made out of the Department against the said allegation was not sustainable. Inasmuch as, the penalties imposed upon the first stage dealer stands set aside and the penalties imposed upon the present appellant, whose case is dependent upon the first stage dealer's case, it is also set aside and appeal is allowed to that extent.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

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