CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70621 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1640-17-18 dated 15/01/2018 passed by Commissioner (Appeals), Central Goods & Service Tax, Noida)

M/s Bhagwati Udyog **.....Appellant**

(C.67 & 68, Industrial Area,

Sikandrabad, Distt. Bulandshahar, U.P.)

VERSUS

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

(Hotel Formule-1, Wegmans Business

KP-III Greater Noida, U.P.)

APPEARANCE:

Shri Suyash Agarwal, Advocate for Appellant
Shri Gyanendra Kumar Tripathi, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO.71587/2019

DATE OF HEARING : 26 August, 2019
DATE OF DECISION : 26 August, 2019

ARCHANA WADHWA

Having heard both the sides duly represented by learned counsel Shri Suyash Agarwal appearing on behalf of the appellant and learned A.R. Shri Gyanendra Kumar Tripathi appearing on behalf of the revenue. . I find that the appellant is engaged in the manufacture of flats and bars and were availing the Cenvat Credit of duty paid on the inputs i.e. Metal Scrap. In some cases, they cleared the metal scrap by reversing the Cenvat Credit of duty availed in respect of the same, in terms of the provisions of Rule 3(5) of Cenvat Credit Rules. The said fact was duly reflected by them in their returns.

2. Revenue entertained a view that clearance of metal scrap, "as such" amounted to trading in metal scrap and since the trading activity was exempted activity, the appellant was liable to pay 6% of the value of the said sold metal scrap in terms of the provisions of Rule 6(3) of Cenvat Credit Rules. Accordingly, proceedings were initiated against them by way of issuance of a show cause notice dated 9.02.2017 raising a demand of Rs.1.14 lac approx. for the period February, 2013 to December, 2016. The said show cause notice culminated into an Order-In-Original confirming the demand alongwith confirmation of interest and imposition of penalty of identical amount. The said order stands upheld by the Commissioner (Appeals) and hence the present appeal.

3. There is no dispute about the facts that the entire credit availed by the appellant was debited at the time of clearance of the metal scrap. This leads to a situation as if no credit was availed by the assessee and if that be so the provisions of Rule 6(3) do not get attracted, thus requiring the appellant to pay 6 % of the value of the metal scrap. Otherwise also I find that if the credit availed is reversed, the provisions of Rule 6(3) has been held to be non applicable by various decisions.

4. Tribunal in the case of M/s. Vishal Pipes Limited Final Order No.71788-71789/2017 dated 24.11.2017 has dealt with the identical situation and by relying upon the earlier

decision in the case of CCE, Ghaziabad Vs. Vahaveer Cylinders Ltd, 2016 (341) ELT 361 (Tri.-Alld.), has held in favour of the assessee. By following the said decision, I set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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