CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.71216 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-000-APP-000-1589-17-18 dated 29/12/2017 passed by Commissioner of Central Excise & GST (Appeals), Noida)

M/s Supertech Precast Technologies Pvt. Ltd., Appellant

(Plot No.2, Sector-16 (Industrial), Greater Noida)

VERSUS

Commissioner of Central Excise, ...Respondent

(Noida)

APPEARANCE:

Absent on call, for the Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner, Authorised Representative for the Respondent

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

FINAL ORDER NO._ 71647/ 2019

DATE OF HEARING : 23 August, 2019
DATE OF DECISION : 23 August, 2019

PER: ARCHANA WADHWA

On matter being called neither anybody appeared nor is there any request for adjournment. I also note that the matter has been coming up on record repeatedly. Accordingly, I proceed to decide the appeal after hearing the learned A.R. and after going through the impugned orders.

2. As per facts on record, appellant is engaged in the manufacture of 'Precast Elements and Hollow Core Slabs etc. They were availing the benefit of Cenvat credit of duty on various inputs as also on capital goods.

3. It is seen that during the year 2011-12 to 2013-14 they received certain capital goods and availed the credit of duty paid thereon to the extent of 100%, whereas they were eligible to avail 50% of the credit in the first financial year and the balance 50% of the credit in the next financial year. Scrutiny of their records let the revenue belief that the appellant has violated the provisions of Cenvat Credit Rules by availing the entire 100% credit in the first financial year. On being pointed out, the appellant reversed the balance 50% of the credit availed by them.

4. Further, it is seen that the appellant availed the Cenvat credit in receipt of various inputs like Cement, MS Bars, TMT Sariya etc. which were used for construction of the building, office etc. Inasmuch as, definition of inputs, as amended w.e.f. 01.04.2011, excluded the construction services from its definition, revenue was of the view that the credit so availed by the appellant was not admissible to them. The appellant reversed the said credit also.

5. Further, it was found that the appellant has manufactured certain goods which were consumed by them within their factory only for further construction process. The said goods involved duty of Rs.84,226/-. This demand also stands paid by the appellant.

6. In the above background, proceedings were initiated against them for confirmation of interest and imposition of penalties. The said notice culminated into an order passed by the Original Adjudicating Authority and upheld by Commissioner (Appeals) wherein the proposals made by Original Adjudicating Authority were upheld. Hence the present appeal against the order of Commissioner (Appeals).

7. It is seen that the only challenge in the present appeal is to confirmation of interest and penalties. As regards the excess availment of credit on the capital goods, it is undisputed that an assessee is entitled to avail the credit of the entire 100% of duty paid on the capital goods. However, the said duty has to be availed in two equal installments of 50% in the financial year when the capital goods are received and the balanced 50% in the next financial year. Instead of availing the credit in the above manner, the appellant availed the entire credit in the first financial year itself. However, it is seen that 50% excess credit availed in the first financial year does not stands utilized by the appellant and remained only as a paper entry. In such a scenario, the question of payment of any interest does not arise in the light of law declared by the Hon'ble Karnataka High Court in the case of Commissioner of Central Excise & Service Tax, LTU, Bangalore Vs M/s Bill Forge Pvt. Ltd. reported as 2012 (279) ELT 209 (Kar.). As such, I set aside the interest confirmation in respect of the said demand.

As regards penalty, the appellant had only availed the credit and had not utilized the same, there cannot be any mensria on their part so as to invoke the penal provisions. Accordingly, I set aside the penalty also, imposed in respect of said default of the assessee.

8. Further, demand of Rs.18 lakhs, approximately, stands confirmed against them by denying them the credit availed after the amendment of the definition of inputs. The appellant has accepted their liability and had reversed the credit. it is also on record that the said credit availed by them was not utilized and hence no interest liability would arise in view of the decision of Hon’ble Karnataka High Court referred (supra). Similarly the law was amended recently and inasmuch as, prior to the amendment the various inputs used for construction of the factory premises etc. were eligible Cenvatable inputs, there could be a doubt in the assessee’s mind that the same are still available for the purpose of credit. Further, the entire credit was availed by the reflecting the same in the Cenvat credit account in which case there cannot be any malafide on the part of the assesse, so as to invoke penal actions. Accordingly, I set aside the confirmation of interest and imposition of penalty on the said count also.

9. Further, demand of Rs.84,226/- stands confirmed against them which the appellants have also paid and has not contested, the interest liability would arise in terms of the provisions of Section 11AB of Central Excise Act and cannot be waived. The same is accordingly upheld. However, as regards penalty, I find that inasmuch as, when the goods were not cleared from the factory, there could be bonafide belief on the part of the assessee that the said goods do not attract any duty.

Accordingly, penalty imposed upon them on the said count is also set aside.

10. Appeal is disposed of in above manner.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

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