CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/20326/2018-SM

[Arising out of Order-in-Original No. BEL-EXCUS-000-APP-MSC-059-17-18 dated 18/12/2017 passed by the Commissioner of Central Tax, Belgaum]

Ashok Iron Works Pvt. Ltd.
Plant-I, 689/1, Udyambag,
Belgaum – 590 008
Karnataka

Appellant(s)

Versus

Commissioner of Central Tax And Central Excise, Belgaum
No.71, Club Road,
Belgaum – 590 001
Karnataka

Respondent(s)

Appearance:

Mr. V.B. Gaikwad, Advocate
328, E' Ward, D-10, Royal Plaza,
Dabholkar Corner,
Kolhapur – 416 001

For the Appellant

Mr. K.B. Nanaiah, AR

For the Respondent

Date of Hearing: 03/08/2018
Date of Decision: 03/08/2018

CORAM:
HON'BLE MR. P DINESHA, JUDICIAL MEMBER

Final Order No. 21110 / 2018

Per : P DINESHA

The only issue involved in this appeal filed by the assessee is penalty under Section 11AC of the Act. It is the case of the appellant that the appellants were availing the credit of CVD paid on the inputs imported by it;

in one of such imports, during the period April 2012 to December 2013, the person taking the credit under the belief that the credit of education cess/SHEC was admissible and accordingly they had availed the credit of Rs. 12,56,779/- (Rupees Twelve Lakhs Fifty Six Thousand Seven Hundred and Seventy Nine only) which was duly declared by them in their cenvat credit register as well as ER-1 Return filed for the said period. On being pointed out by the audit officers, the appellant appears to have immediately reversed the said credit and also paid applicable interest on 06.02.2014 and it was later on that a show-cause notice was issued, i.e. on 13.05.2014 intimating about the disallowance, demanding and recovering from the assessee under Rule 14 along with interest and penalty. The adjudicating authority vide order dated 01.04.2016, however, appropriated the already reversed credit against the proposed demand but also ordered for recovery of interest and also equal amount of penalty in terms of Section 11AC (1) (c) of the Act. On being unsuccessful in its First appeal before the Commissioner of Central Excise (Appeals), Belgaum, the assessee is before this forum.

2. Heard Mr. V.B. Gaikwad, advocate for the assessee and Mr. K.B. Nanaiah, DR for the Revenue and perused the records. I have also gone through various judgments referred to by the learned advocate.

3. During the course of hearing, the learned advocate pointed out that the appellant had paid the duty along with interest at applicable rates much before the issuance of show-cause notice for which the show-cause notice should not have been issued at all. He further submitted that in an identical

situation, the jurisdictional High Court of Karnataka in the case of *Principal Commissioner of Central Excise, Bangalore Vs. Vilax Industrial Fabrics Survey – 2018-TIOL-1363-HC-KAR-CX,* after considering the rival contentions and also various statutory provisions and various decisions has held that -

> *"……8. The imposition of penalty and interest in the present case has been set aside by the learned Tribunal essentially on the ground that soon upon the mistake being pointed out by the Officer of the Department, the Respondent Assessee immediately reversed the cenvat credit wrongly availed by it in respect of the Basic Customs Duty (BCD) and Cess on Textiles.*
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> *9. In view of this, there cannot be said to be any mis-statement, fraud or collusion on the part of the Respondent Assessee through which it wanted to evade the Excise Duty in question. Therefore, the setting aside of the interest and penalty in these circumstances cannot be faulted."*

4. Going therefore by the dictum of the jurisdictional High Court, I set aside the penalty confirmed by the lower appellate authority and allow the appeal.

(Operative portion of the Order was pronounced
in Open Court on **03/08/2018**)

(P. DINESHA)
JUDICIAL MEMBER

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