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

Appeal(s) Involved:

E/20364/2018-SM

[Arising out of Order-in-Appeal No. 379/2017-CT dated 27/10/2017 passed by Commissioner of Central Tax (Appeals), Bangalore.]

M/s. Suprajit Automative Pvt. Ltd
No. 25 & 26A, KIADB Industrial Area,
Doddaballapur – 561 203.
KARNATAKA

Appellant(s)

Versus

Commissioner Of Central Tax, Bangalore North
No.59, HMT Bhawan
Ground Floor, Bellary Road
BANGALORE – 560 032.
KARNATAKA

Respondent(s)

Appearance:

Mr. Raghavendra, Advocate
G.SAMPATH & S. RAGHU
543, 12TH CROSS, 8TH MAIN
J.P NAGARA 2ND PAHASE,
BANGALORE – 560 078.
KARANATAKA

For the Appellant

Mr. K. Murali
Superintendent (AR)

For the Respondent

Date of Hearing: 29.11.2018
Date of Decision: 04.12.2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 21845 /2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 27.10.2017 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of excisable goods i.e., automotive cables falling under Chapter 87 of CETA, 1985. During the audit of the records of the unit, it was noticed that the appellant had availed excess credit of Rs.3,123/0 compared to Annexure-10 Registry, utilized an amount of Rs.11,088/- without availability of credit and taken a wrong opening balance of service tax credit of Rs.14,37,832/- in ER-1 return. The Department entertained the view that the appellant has taken irregular CENVAT credit. On these allegation, a show-cause notice dated 11.2.2015 was issued for demand and recovery of wrongly availed CENVAT credit of Rs.14,82,043/- from April 2010 to December 2013 along with interest and penalty. After due process, the adjudicating authority vide Order-in-Original dated 31.3.2016 confirmed the demand of Rs.14,82,043/- along with appropriate interest and imposed equal penalty of Rs.14,82,043/- under Rule 15(2) of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944. Aggrieved by the said order, appellant filed an appeal before the Commissioner challenging the imposition of penalty. Appellant have deposited 25% of the penalty as per the order of the original authority but by the

present appeal they have challenged that imposition of 25% of the penalty.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order imposing the penalty is not sustainable in law as the same has been imposed without considering the facts and the law. He further submitted that the appellants have wrongly availed the CENVAT credit and as and when the audit pointed out, the same was reversed along with interest much before the issue of show-cause notice. He further submitted that the amount has been paid in March 2014 itself before the issue of show-cause notice which shows that the omission/commission is purely unintentional and there is nothing on record to show that there was intention to evade the duty. He further submitted that the appellant is a 100% EOU earning substantial foreign exchange for the country and has a good track record. He also submitted that once the irregular CENVAT credit has been reversed along with interest, then the department should not have issued the show-cause notice itself. In support of this submission, he relied upon the following decisions:

- ***IDMC Ltd. vs. CCE, Vadodara-I: 2014 (302) ELT 420 (Tri.-Ahmd.)***

- ***Kotsons Pvt. Ltd. vs. CCE: 2016 (333) ELT 456 (Tri.-Del.)***
- ***Kumar Organics Products Ltd. vs. CCE: 2014 (307) ELT 774 (Tri.-Bang.)***
- ***CCE vs. Shrigonda Sahakari Sakhar Karkhana Ltd.: 2015 (327) ELT 429 (Tri.-Mum.)***
- ***Tata Motors Ltd. vs. CCE: 2014 (311) ELT 353 (Tri.-Bang.)***

5. On the other hand, the learned AR defended the impugned order and submitted that the appellant has wrongly taken the CENVAT credit and also utilized a part of it, though the learned AR fairly conceded that the appellant has reversed the credit along with interest before the issue of show-cause notice. He further submitted that the appellant has paid 25% of the penalty voluntarily in compliance with the order of the original authority.

6. After considering the submissions of both the parties and perusal of the material on record and various decisions relied upon by the appellant, I find that the appellant is a 100% EOU and as and when the audit pointed out the irregular availment of credit, the appellant reversed the same along with interest and also paid 25% of the penalty as directed by the original authority. But they have challenged the imposition of penalty before the Commissioner (A) but the Commissioner (A) rejected the said appeal. Further, I find that the department has not brought any

evidence on record to show that the appellant have suppressed the material fact with intent to evade payment of duty. As and when it was brought to their notice, they reversed the same. Therefore, in view of these circumstances, the ratio of the judgments cited supra squarely apply and penalty is not imposable in such circumstances. Therefore, by following the ratio of the above said decisions, I am of the view that the impugned order imposing the penalties is not sustainable and the same is set aside by allowing the appeal of the appellant.

(Order was pronounced in Open Court on **04.12.2018.)**

S.S GARG
JUDICIAL MEMBER

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