CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

SINGLE MEMBER BENCH
COURT NO. I

APPEAL NO. E/61482/2018

[Arising out of Order-in-Appeal No. 218/MA/RTK/2010 dated 03.05.2016 passed by the Commissioner of Central Excise (Appeals), Gurgaon]

Date of hearing/decision: 06.03.2019

M/s R T Paper Boards Ltd	:	**Appellant(s)**
VS		
C.C.E. & S.T. Gurgaon I	:	**Respondent(s)**

Appearance:
Present for the Appellant(s):Shri Amar Pratap Singh (Advocate)
Present for the Respondent(s): Shri Vijay Gupta (AR)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

FINAL ORDER NO. **60224**/2019

Per : **Ashok Jindal**

The appellant is in appeal against the impugned order wherein demand on account of clearance of capital goods has been confirmed in terms of Rule 3(5A) of Cenvat credit Rules, 2004.

2. The facts of the case are that the appellant acquired paper division of Ms. Rollatainers Ltd. in the year 2001-2002 on as is where is basis. In the year 2005-2006, the appellant closed their business and surrender their registration certificate as there were no plant and machinery lying in their stock, therefore, in terms of Rule 3(5A) of Cenvat Credit Rules, 2004. The appellant was directed to reverse the

Cenvat credit availed on the said capital goods, the demand was confirmed. Against the said order, the appellant approached to this Tribunal and this Tribunal remanded matter back to the adjudicating authority for *de nova* adjudication keeping all issues open. In remand proceedings, the appellant did not receive the hearing notices, therefore, the adjudicating authority pass the adjudication order confirming the recovery of the amount in terms of Rule 3(5A) of Cenvat credit Rules, 2004. The said order was affirmed by the ld. Commissioner (Appeal), therefore, the appellant is in appeal before this Tribunal second time.

3. The Ld. Counsel for the appellant submits that they have taken over the paper division of Rollatainers Ltd. in the year 2001-2002 on as is where is basis and no cenvat credit was taken on capital goods, as out of four machines, three machines were purchased when the modvat scheme was not in operation, therefore, the question of availment of Cenvat credit does not arise. Without appreciating these facts and without bringing on record that the appellant has availed any Cenvat credit, the demand under Rule 3(5A) of Central Excise Rules, 2004 is not sustainable against the appellant in the light of the decision of this Tribunal in the case of ***Shree Khedut Sahakari Khand Udyog Mandli Ltd Vs. CCE & ST, Surat –I 2017 (11) TMI 1000 – CESTAT Ahmedabad.***

4. He further submits that onus is on the Revnue to prove that Cenvat credit was availed by the appellant as it is cleared from the facts of the case that they have not availed the cenvat credit, therefore, it is prayed that the impugned order is to be set aside.

4. On the other hand, Ld. AR supported the findings of the impugned order and also submitted that the appellant has not brought on record any proof that they have not availed the Cenvat credit on these capital goods.

5. Heard the parties, considered submissions.

6. On careful consideration of submissions made by both the sides, I find that the facts of the case are not in dispute that the appellant has taken over the unit on as is where is basis with the capital goods in question in 2001 and no Cenvat credit was taken at that time, as appellant has not taken cenvat credit on the capital goods, therefore, provision of Rule 3(5A) of Cenvat credit Rules, 2004 are not applicable to the facts of this case. In these circumstances, as facts are not in dispute, the demand under Rule 3(5A) Cenvat credit Rules, 2004 is not sustainable against the appellant. Accordingly, the same is set aside, therefore, no penalty is impossible on the appellant

7. In terms of above, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Order dictated and pronounced in the court)

Ashok Jindal
Member (Judicial)

Kailash