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/61746/2018-EX[SM]

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-1579-18-19 dated 09.08.2018 passed by the Commissioner (Appeals), Ludhiana]

M/s Super Star Industries : **Appellant(s)**

VS

C.C.E., Jalandhar : **Respondent(s)**

Appearance:
Present for the Appellant(s): Mr. Sudhir Malhotra, Advocate
Present for the Respondent(s): Mr. Bhasha Ram, A.R.

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

Date of hearing/decision: 20.03.2019

FINAL ORDER NO. 60333/2019

Per Ashok Jindal :

The appellant is in appeal against the impugned order imposing penalty under Rule 26 of the Central Excise Rules, 2002.

2. The facts of the case are that an investigation was conducted at the end of one M/s Saggar Steels Pvt. Ltd., wherein certain shortage of pig iron was found, who stated that they were receiving only Cenvatable invoices to avail inadmissible Cenvat Credit. Further, it was investigated that two of such invoices have been issued by the appellant whereas the vehicle numbers mentioned in the invoices were not capable for transport of the goods. Therefore, a penalty

under Rule 26 of the Central Excise Rules, 2002 was proposed to impose on the appellant and by way of adjudication, penalty was imposed. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that they is no evidence on record to show that the appellant has not supplied the goods along with the invoices. Moreover, the appellant is selling their goods at the factory gate and the transportation has been arranged by the buyers themselves. In that circumstance, it cannot be said that the appellant has not supplied the goods. Moreover, the buyers have not mentioned the name of the appellant that they have received only invoices and not received any goods. In that circumstance, penalty on the appellant is not imposable.

4. On the other hand, the Ld. AR for the Revenue submits that the vehicles numbers mentioned in the invoices are not capable for transportation of the goods, therefore the goods were never transported from the appellant's place to the buyers' place and the buyers have admitted that they were received Cenvatable invoices without any goods. Therefore, penalty is rightly imposed.

5. Heard the parties and considered the submissions.

6. I find that in this case, the appellant is selling the goods at their factory gate and the transportation has been arranged by the buyers themselves. These facts have not been disputed by the Revenue. Moreover, the buyers of the goods have never named the appellant that they have not received the goods from the appellant and

received only invoices. In these circumstances, without investigating the appellant in detailed, penalty under Rule 26 of the Central Excise Rules, 2002 is not imposable. Therefore, penalty imposed on the appellant is set aside.

7. In result, the appeal is allowed.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

RA_Saifi