CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNALSOUTH ZONAL BENCH CHENNAI

Appeal No.E/440/2005

[Arising out of Order-in-Original No.9/2005 (Commissioner) dt. 07.03.2005 passed by the Commissioner of Central Excise, Salem]

Steel Authority of India Ltd. — Appellant

Versus

Commissioner of Central Excise & ST
Salem — Respondent

Appeal No.C/234/2008

[Arising out of Order-in-Appeal No.04 & 05/2008-Cus (SLM) dt. 31.03.2008 passed by the Commissioner of Customs &Central Excise (Appeals), Salem]

Steel Authority of India Ltd. — Appellant

Versus

Commissioner of Central Excise & ST
Salem — Respondent

Appearance:

Shri R. Parthasarathy, Advocate
For the Appellant

Shri K.P. Muralidharan, AC (AR)
Shri R. Subramaniyan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing: 28.07.2017
Date of pronouncement: 21-08-2017

FINAL ORDER No. 41724 – 41725/2017

Customs, Excise & Service Tax Appellate Tribunal

Per Bench

Both these appeals relate to the same dispute and hence are taken up together for common disposal.

2. The facts of the case are that appellants are manufacturers of Hot Rolled and Cold Rolled Stainless Steel products, Hot Rolled Carbon Sheet Coils, Sheets and Plates and Stainless Steel Coin Blanks falling under Chapter Headings 72 and 73 of the Central Excise Tariff Act, 1985. Appellant had imported 2000 MTs Hot Rolled Stainless Coils (HRSS coils) vide Bills of Entry No.411286 dt. 19.7.2002 and 388555 dt.08.04.2002 availing full exemption from Customs duties under Notification No.21/2002-Cus. dt. 1.3.2002 Sl.No.196. It appeared that appellants have used only a quantity of 457.113 MTs HRSS coils for the intended purpose namely for manufacture of coin blanks for supply to Indian Government Mint. Hence appellants were issued a notice proposing demand of customs duty forgone along with interest thereon and imposition of penalty under various provisions of law. After due process of adjudication, original authority considered the fact of 457.113 MTs HRSS coils having been used for specified periods and demanded differential duty liability with respect to 1542.887 MTs, hence confirmed demand of Rs.2,03,85,115/- with interest liability thereon. Original authority also appropriated the amount of Rs.2,03,85,115/- and Rs.12,45,805/-

paid by the appellant during investigation towards duty and interest liability respectively, however, refrained from imposing penalty. Both the appellant as well as the department filed appeals with the Commissioner (Appeals) who vide his impugned order dt. 31.3.2008 rejected the appeal of the appellant, however accepted the prayer of department for imposition of penalty under Section 117 of the Customs Act, 1962 and imposed penalty of Rs.10,000/- on appellant under that section. Aggrieved, appellant, M/s. Steel Authority of India Ltd., Salem Steel Plant have filed appeal before this forum and hence Appeal No.C/234/2008.

3. Subsequent to appellants having made the payment of Rs.2,03,85,115/- towards differential duty liability paid in respect of the two Bills of Entry vide T.R.6 challans, appellant took cenvat credit of the CVD portion thereof amounting to Rs.80,25,636/- along with interest. Department took the view that availment of such credit was not permissible since credit was taken on T.R.6 challans which are not prescribed as eligible documents for the purpose of availment of cenvat credit under Rule 7 of Cenvat Credit Rules, 2002 and further, amount was paid in respect of goods imported and involved in offence case for contravention of provisions of Customs Act, 1962 with intent to evade payment of duty. Hence show cause notice was issued to appellant proposing disallowance of cenvat credit amount of

Rs.80,25,636/- thereon and imposition of penalty. In adjudication, Commissioner vide impugned order dt. 07.03.2005 ordered recovery of the impugned credit amount along with interest thereon and also imposed penalty of Rs.5 lakhs under Rule 13 of Cenvat Credit Rules, 2002 read with Section 38A of the Central Excise Act, 1944. Hence Appeal E/440/2005.

4. On 28.07.2017 when the matter came up for hearing, Shri R. Parthasarathy, Ld.Advocate for the appellant made oral submissions which can be broadly summarized as under :

(i) Out of 2000 MTs of Hot Rolled Stainless Steel coils (HRSS coils), imported, they were put to use as follows :

(a) Used in the manufacture and supply of coin blanks	: 457.113 MTs;
(b) Used in the manufacture of Cold Rolled Stainless} Steel (CRSS) Strips, which were supplied to the } India Government Mint, which had, in turn, used } them for manufacture of coin blanks .. .. }	: 1,178.570 MTs
(c) Quantity not used for any of the above 2 purposes	: 364.317 MTs
Total Quantity	: **2,000.000** MTs

(ii) There is also no dispute that the appellant had used 457.113 MTs of HRSS coils for manufacture of coin blanks which were supplied to the Government of India Mint.

(iii) The department does not dispute that 1,178.570 MTs of HRSS coils have been converted into CRSS Strips and supplied to Mint.

Customs, Excise & Service Tax Appellate Tribunal

(iv) The India Government Mint had acknowledged the receipt of CRSS Strips and that these have been used / are being used in the manufacture of coin blanks in India Government Mint, Mumbai.

(v) So long as the HRSS coils were used in the manufacture of CRSS Strips supplied to the India Government Mint, which in turn had converted the CRSS Strips into coin blanks, the exemption should be available as the purpose/objective behind this exemption is to prevent increase in cost of coin blanks from which the Re.1 and Rs.2 coins are being minted for use by the public in the country. The narrow interpretation placed by the department does not promote the objective behind this exemption. This is more so when there is no dispute that the quantity of 1,178.570 MTs on HRSS was used in the manufacture of CRSS Strips supplied to the Mint. The duty on this quantity is Rs.1,55,71,013.

(vi) Out of the total demand of Rs.2,03,85,115 confirmed at page 242 of the impugned order, Rs.1,55,71,013 cannot be sustained. The balance duty demand, if at all, may only be Rs.48,14,112.

(vii) Since the balance quantity was used in the manufacture of other items cleared on payment of ED, Cenvat credit of the CVD and SAD is available as credit to the appellant.

(viii) On merits, thus the demand can only be to the extent of Rs.48,14,112 with CENVAT of CVD and SAD (Rs.24,38,215) being available.

(ix) The proceedings were also hit by jurisdiction. The SCN was issued by Asst. Commissioner of Central Excise, Salem-I under Rule 8 of the 1996 Rules, invoking Section 28 of the Customs Act,1962. It is submitted that the said Asst. Commissioner had not been notified as officers of Customs at the relevant time and hence as per the ratio of Tribunal decision in the case of *Molex (I) Ltd. Vs CC*Bangalore 2012 (275) ELT 607 (Tri.-Bang.) which was confirmed by the Hon'ble High Court Karnataka vide 2015 (317) ELT 250 (Kar.) and maintained by Supreme Court as reported in 2015 (326) ELT A184 (SC). Proceedings initiated as above the Asst. Commissioner is not maintainable.

x) With respect to Appeal E/440/2005, the same relates to disputes on availment of cenvat credit of Rs.80,25,636/- being the component of additional duty of customs, out of the total duty of Rs.2,03,85,115/- paid by the appellant on 1,542.887 MTs of HRSS coils in 2002, well before issue of the SCN in 2005. In the impugned Order-in-Original dt. 07.03/2005, the Commissioner has held that amount of Rs.80,25,636/- clearly fell under the category of duty recoverable from manufacturer/importer due to non-levy, short-levy by reason of fraud, collusion, etc., as set out in Rule 7 (1)(b) of the Cenvat Credit Rules, 2002 and hence, the credit was liable to be recovered under Rule 12 of the Cenvat Credit Rules. Rule 7(1)(b) has no application to the facts of the present case as held in the decision of the Hon'ble High Court of Karnataka in *Karnataka Soaps & Detergents* Ltd. Vs CCE Mysore reported in 2010 (258) E.L.T. 62 (Kar.). The above view was followed by the Hon'ble Tribunal in the case of *Essar Oil Ltd. Vs CCE Rajkot* reported in 2014 (303) E.L.T. 255 (Tri.-Ahmd.). In view of the above, the impugned order holding that the appellant is not entitled to Cenvat credit of the CVD paid and imposing penalty of Rs.5,00,000/- [Rupees five lakhs only] are without any basis in law and is liable to be set aside.

5.1 On the other hand, on behalf of the department, Ld. A.Rs Shri K.P. Muralidharan and Shri R. Subramaniyan support the adjudication and oppose the appeal.

5.2 They point out that the goods were cleared without payment of duty in terms of Sl.No.196 of Notification No.21/2002-Cus. subject to post-importation conditions which were not complied with. Hence duty forgone will have to be recovered from them.

5.3 On the contention of jurisdiction, Ld. A.Rs point out that in *the Molex (I) Ltd.* case the Hon'ble Apex court had dismissed the SLP filed by department holding that notice was issued prior to 2005. However, in this case notice has been issued on 29.11.2005.

5.4 Further, retrospective amendment has been indicated in Section 28 of the Customs Act by insertion of sub-section (11) w.e.f. 16.9.2011 which have empowered inter alia Asst. / Deputy Commissioner of Central Excise appointed as officers of customs to be proper officer of the purposes of that section. Ld. A.R points out that the above amendment has been upheld in the case of *Miraj Marketing Vs CC* 2015 (327) ELT 663 (Tri.-Chennai).

5.5 On merits, Ld. A.Rs further submit that exemption under Notification No.21/2002- Sl.No.196 is available only if the imported HRSS coils are used in the manufacture of the specified final product namely Coin Blanks, in the importer's factory. Exemption would apply only when HR coils imported as Coin Blanks in the importer's factory to be supplied.

5.6 Importers had also executed a bond to use the imported material in their factory at Salem for use in the manufacture of Stainless Steel Coin Blanks to be supplied to Govt of India Mint.

5.7 Thus, actual use for intended purpose of manufacture of Coin blanks is a must to avail benefit of a notification. Appellants have also used part of the duty free HRSS coils, for manufacture of CRSS strips/other products and supplied to private parties like IFB Industries, TI Metal etc. and not for manufacture of Coin Blanks. Hence on such conversion and removals and clearances the duty foregone is required to be recovered.

5.8 In respect of appeal E/440/2005, appellant has availed CVD as cenvat credit on the basis of TR 6 challans which are not prescribed as eligible documents for the purpose of availment of cenvat credit in Rule 7 of CCR 2002.

5.9 Further, the CVD has been paid by appellant pursuant to offence case registered against them for contravention of Customs Act, 1962 with intent to evade payment of duty and hence amount thereof cannot be availed as cenvat credit as per the provisions of Rule 7 (b) ibid.

6. Heard both sides and have gone through the facts. The core issues that come up for appellate decision are as follows :

a) In respect of Appeal C/234/2008 - Whether the proceedings are hit by jurisdiction;

(b) Whether quantity of HRSS coils which were not converted into coin blanks and supplied to Govt of India Mint would be eligible for exemption under Sl.No.196 of Notification No.21/2002-Cus., as it stood during the impugned period; and

c) In respect of Appeal E/440/2005 – whether component of the additional duties of customs voluntarily paid up by the appellant before issue of SCN through TR6 challans would be barred from being availed as cenvat credit vide Rule 7 of the Cenvat Credit Rules, 2002.

Appeal No.C/234/2008

7.1 In respect of the issue framed at 6(a) above, namely contention on jurisdiction, appellants have relied on the ratio of the decision in the *Molex* case (supra). However, we find ourselves in agreement with the counter-argument of Revenue that whereas in the *Molex* case the notice was issued prior to 2005, in the instant case that was issued on 29-11-2005 only. Be it at it may, the retrospective amendment Section 28 of the Customs Act, 1962 and insertion of sub-section (11) w.e.f. 16.09.2011 has taken care of the earlier lacuna concerning appointment of certain officers of Central Excise as proper officers of customs for the purposes of that section. In the event, the contention of appellant on jurisdiction is misconceived and hence will not succeed.

7.2 In respect of the issue framed at para 6 (b) above, we find that 2000.00 MTs HRSS coils were imported by the appellant without payment of duty in terms of Sl.No.196 of Notification No.21/2002-Cus.. The relevant portion of the said Notification is reproduced below for better understanding :

> **Effective rates of basic and additional duty for specified goods falling under chapters 1 to 99**
>
> In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 17/2001-Customs, dated the 1st March, 2001 [G.S.R. 116(E), dated the 1st March, 2001], the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts

the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) **from so much of the duty of customs** leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;

(b) **from so much of the additional duty** leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition No. of which is mentioned in the corresponding entry in column (6) of the said Table :

Provided that nothing contained in this notification shall apply to -

(a) the goods specified against serial Nos. 239, 240, 241 and 242 of the said Table on or after the 1st day of April, 2003;

(b) the goods specified against serial Nos. 250, 251 , 252 and 415 of the said Table on or after the 1st day of March, 2005.

Explanation. - For the purposes of this notification, the rate specified in column (4) or column (5) is *ad valorem* rate, unless otherwise specified.

Table

S. No.	Chapter or Heading No. or sub-heading No.	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
196.	72	Hot rolled stainless steel coils for use in the manufacture of coin blanks to be supplied to a Mint of the Government of India	Nil	Nil	5

ANNEXURE

Condition No.	Conditions

Customs, Excise & Service Tax Appellate Tribunal

5 If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

7.3 The facts not disputed in respect of the imported quantity of 2000 MTs HRSS coils are that 457.113 MTs were used in the manufacture and supply of coin blanks, 1178.570 MTs were used in the manufacture of CRSS strips, which were supplied to the Indian Government Mint, which had, in turn, used them for manufacture of coin blanks and finally remaining 364.317 MTs of quantity were not used for any of the above two purposes.

7.4 There is no dispute about the quantity of 457.113 MTs of HRSS coils which have been converted and supplied as coin blanks to the Mint.

7.5 In respect of 1178.570 MTs imported HRSS coils, they have been converted into CRSS strips and supplied to the Mint. Sufficient proof has also been adduced, which has not been disputed, to confirm that CRSS strips thereupon were used in the manufacture of coin blanks by the Govt of India Mint. The only controversy in respect of this quantity is whether the words "***for use***" in the manufacture of coin blanks requires the appellant to manufacture and supply only coin blanks to the Govt of India Mint.

7.6 The scope of phrase "***for use***" was gone into by the Hon'ble Supreme Court in the case of *State of Haryana Vs Dalmia Dadri*

Customs, Excise & Service Tax Appellate Tribunal

Cement Ltd. – 1988 (14) ECR 292. The issue therein related to a dispute concerning cement supplied to Electricity Board on the basis of certificates issued by the latter that such cement was required <u>for use</u> in the generation or distribution of electrical energy which would attract exemption granted under Punjab General Sales Tax. **<u>The Hon'ble Apex Court held that the expression "for use" must mean "intended for use"</u>**. The relevant portion of the judgment is reproduced herein below :

> "We are unable to accept the submission of Mr. Bana that, in order to get the exemption it must be shown that the goods in question namely, the cement supplied by the assessee in this case was actually used in the generation or distribution of electrical energy. It must be noted that the important words used in the relevant provision are "goods for use by it in the generation or distribution of such energy" (emphasised supplied by us). On a plain reading of the relevant clause, it is clear that the expression "for use" must mean "intended for use". If the intention of the legislature was to limit the exemption only to such goods sold as were actually used by the undertaking in the generation and distribution of electrical energy, the phraseology used in the exemption clause would have been different as, for example, "goods actually used" or goods used"

7.7 The ratio laid down by the Apex court has been followed in a number of decisions and judgements of higher appellate forums, for example by the Tribunal in *Sha Harakchand Dharmaji Vs CC Madras* - 1996 (88) ELT 764 (Tribunal)The relevant portion of the judgment is extracted below :

> *"In the present case, the phrase used is goods imported into India" for use" in the leather industry. Therefore, the principle laid down by the Hon'ble Supreme Court in the above case will apply to the case of the appellants. The contention of the SDR that the words "for use" should be taken to be actual use*

cannot be accepted. This decision of the Hon'ble Supreme Court was also taken note of by the Tribunal in the decision reported in [1991 (45) E.L.T. 553]. In that case also the issue involved was interpretation of the words used in the notification wherein the words used was "for use" in the context of penetrators used in the leather industry as per Notification 224/85. The Tribunal in the said decision has followed decision of the Hon'ble Supreme Court cited supra. The observation of the Tribunal in Para 16 of their decision is reproduced below :

"In the present case the notification permits exemption to penetrators imported for use in the leather industry. It has been shown that the substance imported has use in leather industry as a penetrator. Proof of actual use is not a condition attached to the exemption. If it were so, the notification would have provided for execution of a bond obliging the importer to produce proof of actual use as in the case of many other notifications. We, therefore, do not agree with the Revenue's contention that the benefit of exemption would not be available to the appellants since they are not engaged in the leather industry but are stockists for sale."

A perusal of the above decision goes to show that the burden of actual use is not a condition attached to the exemption, as otherwise the notification would have provided for executing a bond and obliging the importer to produce proof of actual use. In any event in the case of the goods falling under Heading A, there was no such condition attached and the conditions attached were only in the case of the goods described under Heading B of the notification. In view of the above, we are not able to agree with the contention of the learned SDR. At this stage, the learned Counsel for the appellants drew our attention to the Collectors' conference where this issue was taken and he also produced a copy of the minutes of the Collectors' conference which is reproduced below :

CONFERENCE CONCLUSION : After discussing the issue, the Conference recommended that since question raised by Bangalore Custom House is about the goods which can be used for general purpose also. T.R.U. should re-examine the issue whether the items of general use can be shifted to list `B'. The conference observed that items figuring at Sr. Nos. 30, 31, 35 and 36 may have alternative uses and not having exclusive use in the leather industry. T.R.U. should also check with C.L.R.I., Madras or with any other Institute under the control of C.I.S.R. for revising the list `A' to cover only those items which are exclusively used in the leather industry, to be in line with the intention of the notification. ***On the question whether, notification can be extended to traders, Conference felt that the same could be allowed as the items are not subject to any actual user condition.***

> ***5.****It is thus seen from the conclusion arrived at the Collectors' conference that the appellants are entitled to the benefit of the notification in question. In the proviso, we set aside the impugned order and allow the appeal with consequential relief."*

The same ratio has also been followed by Tribunal in *CCE Udaipur Vs Chambal Fertilizers and Chemicals Ltd.*2017 (347) ELT 343 (Tri.-Del.).

7.8 Viewed in this light, we find that in respect of 1178.570 MTs imported HRSS coils which have been converted to Cold Rolled Stainless (CRSS) strips by the appellant and entire quantity thereof supplied to the Government Mint, who in turn, have certified and confirmed that they have been used in the manufacture of coin blanks, the imported goods have satisfied the post-importation condition of Notification No.21/2002-Cus., The imported goods have been converted into CRSS coils which are **intended for use** for manufacture of coin blanks by the Government of India Mint, the factum of which is not disputed. In the event, in respect of this quantity of 1178.570 MTs of HRSS coils, it will have to be considered that they have satisfied the condition "for use in manufacture of coin blanks" mandated in the said notification. Hence there cannot be any demand of duties of customs on this quantity. That part of the impugned order demanding duty on this quantity will therefore require to be set aside, which we hereby do. So ordered.

7.9 In respect of the quantity of 364.317 MTs, appellants have themselves conceded that post-importation condition of the Notification No.21/2002 has not been complied with and have paid up the duty forgone thereof. Hence demand of duties of customs on the said quantity of 364.317 MTs HRSS coils, along with interest liability thereon will sustain. So ordered.

7.10 In respect of the remaining quantity of 457.113 MTs, there is no allegation or dispute about their not having been used in the manufacture and supply of coin blanks supplied to the Mint. Hence no differential duty liability against the said quantity can be demanded.

7.11 Appeal C/234/2008 is therefore partly allowed as aforesaid with consequential relief, if any, as per law.

8.1 **<u>Appeal No.E/440/2005</u>**

This matter is intrinsically connected with the appeal C/234/2008. The jurisdictional Range officer of the appellant booked an offence case on 30.09.2002, on the grounds that appellant had used imported duty free HRSS coils for purposes other than mandated in exemption Notification No.21/2002-Cus., In response, by 10.10.2002, the appellant had paid up duty liability amounting to Rs.2,16,30,320/- out of which the component of additional duty of customs (CVD) was Rs.80,25,636/-, which amount was availed by them as cenvat credit on 11.3.2003. The department took the view that the credit taken was irregular for the following reasons :-

(i) Credit has been taken on T.R. 6 challans which are not prescribed as registered document under Rule 7 of Cenvat Credit Rules.

(ii) The amount has been paid on goods already imported and involved in the offence case registered against the appellant under Customs Act, 1962. Hence credit equivalent of CVD amount could not be availed by the appellant.

8.2 After going through the facts on record, we do not find any force in the department's contention that credit has been wrongly taken on T.R. 6 challans. Rule 7 of the CCR 2002 allows credit to be taken by the manufacturer on the basis of, inter alia, a Bill of Entry. Without doubt, the document evidencing payment of the duties including additional duty of customs (CVD) against the Bill of Entry will undoubtedly be against a T.R.6 challan or like document, which alone would evidence the discharge of duty with CVD in respect of such Bill of Entry. On this score, the plea of the appellant will succeed.

8.3 The next argument for denying the credit is that duty has been paid consequent to investigation being initiated. Hence the availment of credit is hit by Rule 7 (b) of the CCR 2002. We find no merit in this ground also. In this first place, Rule 7 (b) is confined to supplementary invoice issued by a manufacturer or importer of the inputs or capital goods for evidencing payment of additional amount excise duty or additional duty of customs leviable, however in cases involving fraud, collusion or wilful misstatement or suppression of facts etc. such supplementary invoices will not be considered as ineligible document for availment of cenvat credit. As seen above, the credit has been availed not on the basis of supplementary invoices, but on the strength of T.R.6 challans evidencing payment of duty liability in respect of Bill of Entry on which duties of customs had not been paid as appellant was claiming the benefit of Notification No.21/2002-Cus., Sl.No.196. No doubt, an offence case has been booked by the department on the grounds that, except for 457.113 MTs, the remaining quantity (out of 2000 MTs imported), would not be eligible for the notification exemption as post-importation condition has not been fulfilled. However, in respect of 1178.570 MTs converted into CRSS coils and supplied to the Mint, who, in turn, converted them further into blanks, it has been held herein above that the entire exercise has culminated in fulfilment of the condition laid down in the said notification and hence duty demand on that quantity cannot sustain. Only on 364.317 MTs of the imported goods which as per appellant's own concession, have not been put to the intended use, demand of duty thereon has been sustained. In any event, this certainly is not a case attracting provisions of Rule 7(c) of the CCR 2002. The importer is a Public Sector Unit availing a specially focussed exemption to import HRSS coils for use in manufacture of coin blanks for the Mint which is a Government undertaking. The 364.117 MTs where post-importation condition has not been fulfilled constitute just 18% of the total quantity imported. From the facts on record it also emerges that the appellant did not have enough coin blanks orders upto September 2002 for the 2000 MTs HRSS coils imported in April 2002 and July 2002. Even then, only a part of the 2000 MTs imported namely 364.117 MTs was not put to intended use. This short coming on the part of the PSU could well be attributed, apart from lack of orders for coin blanks, to improper monitoring of the total quantity imported. But attributing intention to evade duty by suppression, fraud etc. would be too harsh an aspersion, especially considering that the PSU manufactures or handles humongous quantities of raw material and final products related to steel and products thereof. In any case, on being pointed out, the appellant has paid up the duties of customs forgone in respect of these 364.117 MTs, including the component of CVD thereon amounting to Rs.80,25,356. The case laws relied upon by the Ld. Advocate (para 4(x) supra) also support such a conclusion. In the circumstances, we do not find any legal bar to the availment of cenvat credit of Rs.80,25,636/- by the appellant herein. Needless to say the penalty of Rs.5 lakhs imposed under Rule 13 of the CCR Rules will also not sustain. Accordingly, impugned order cannot

Customs, Excise & Service Tax Appellate Tribunal

sustain and therefore will have to be set aside which we hereby do. In consequence, Appeal No.E/440/2005 is allowed with consequential benefits, if any, as per law.

(pronounced in court on 21-08-2017)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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