IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Customs Appeal No.E/60314/2013-EX [SM]

[Arising out of Order-in-Appeal No. 106(VC)CE/JPR-I/2013 dated 06.09.2013 passed by the Commissioner (Appeals-1), Jaipur].

Sidhi Vinayak Induction Pvt. Ltd …Appellant

Vs.

C.C.E, & S.T.-Jaipur-i … Respondent

Present for the Appellant : Mr. Jatin Mahajan, Advocate
Present for the Respondent: Mr. G.R.Singh

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 09.05.2016

FINAL ORDER NO. 56418/2016

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 06.09.2013 passed by the Commissioner (Appeals), Customs and Central Excise, Jaipur, upholding confirmation of cenvat demand along with the interest and penalty imposed in the adjudication order.

2. Brief facts of the case are that the appellant is engaged in manufacture of M S Ingots, falling under chapter 72 of the Central Excise Tariff Act, 1985. During the disputed period April 2008 to July 2009, the appellant had availed cenvat credit of Central Excise duty paid on M.S. Angles, H.R. Coils, Sections, Joints, Channels, Cements etc., treating the same as

capital goods. Taking of cevant credit was disputed by the department on the ground that the disputed goods are neither confirming to the definition of inputs nor capital goods.

3. The Ld. Advocate appearing for the appellant submits that the appellant is not contesting the demand of cenvat credit along with interest confirmed by the authorities below. He submits that the prayer of the appellant is for setting aside the penalty imposed by the authorities below. To support such stand, the Ld. AR submits that there were divergent views by different judicial forums regarding entitlement of cenvat credit on the disputed goods, and thus the appellant entertained a bonafide belief that cenvat credit is available on such goods, and accordingly, availed such credit in the books of account. Since there is no element of suppression fraud, collusion mis-statement etc, with intention to avail fraudulent cenvat credit, penalty cannot be imposed under Section 11AC of the Central Excise Act, 1944 read with Rule 15(2) of the Cenvat Credit Rules, 2004.

4. On the other hand, the Ld. DR appearing for the respondent reiterates the findings recorded in the impugned order

5. Heard both sides and perused the case records.

6. I find that the issue regarding entitlement of cenvat credit on disputed goods were highly debatable and the Larger

Bench of this Tribunal in the case of Vandana Global Ltd. Vs. CCE 2010 (253) E.L.T. 440(Tri. LB) has held that Central Excise duty paid on such goods are not available for cenvat credit. I also find that the period involved in this case is from 15.04.2008 to 19.01.2009, which is prior to the date of amendment of Rule 2(k) *ibid* and also pronouncement of the decision by this Tribunal in the case of Vandana Global (supra). Therefore, in the facts and circumstances of the case, malafides cannot be attributed for imposition of penalty on the appellant.

7. In view of above, the appeal is partly allowed and the impugned order set aside to the extent of imposition of penalty on the appellant.

(Dictated and pronounced in the open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Sakshi