CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Excise Appeal No. E/55453/2014-EX [DB]

[Arising out of Order-in-Appeal No. JAI-EXCUS-001-COM-017-14-15 dated 30.05.2016 passed by the Commissioner Central Excise jaipur]
For approval and signature:

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

M/s.Cords Cable Industries Ltd. ...Appellant

Vs.
C.C.E. & S.T. Jaipur-I …Respondent

Appearance:
Mr. P.K. Mittal, for the Appellant
Mr. Yogesh Agarwal, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing.03.11.2016
Date of Decision. 20.02.2017

Final Order No. 51887 /2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 02.06.2014 passed by the Commissioner of Central Excise and Customs, Jaipur.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Electric Wires and Cables, falling under Chapter Heading 8544 of the Central Excise Tariff Act, 1985.

The appellant is an EPCG license holder. On the basis of the EPCG license, the appellant had imported eligible capital goods (Plant and Machinery) for manufacture of the final product i.e. power cables. In terms of the letter of invalidation issued by the DGFT, New Delhi, the appellant was entitled to procure Plant and Machinery without payment of Central Excise Duty. However, while procuring the impugned capital goods, the appellant had paid the Central Excise duty claimed by the suppliers on the invoices and availed cenvat credit of such duty paid on procurement of goods. The credit so availed was reversed by the appellant on 18.11.2011 and 01.04.2012 for obtaining the Terminal Excise Duty (TED) benefit from the DGFT. Subsequent to reversal of cenvat credit, the department issued the Show Cause Notice dated 24.05.2013, proposing for recovery of interest, appropriation of cenvat reversal into the Government account and for imposition of penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. After issuance of Show Cause Notice, the appellant had deposited the interest amount on 28.06.2013. The show cause notice was adjudicated vide the impugned order, wherein cenvat credit amounting to Rs. 1,35,45,628/- already reversed and interest amount of Rs. 20,44,576/- paid by the appellant was appropriated in the government account. Further, penalty of Rs. 1,35,45,628/- was imposed on the appellant under Rule 15(2) *ibid* read with Section 11AC *ibid*.

3. The Ld. Counsel appearing for the appellant submits that the appellant is not pressing for the cenvat credit and interest there on appropriated in the adjudication order. The grievance of the appellant against the impugned order is that imposition of penalty is not legal and proper inasmuch as payment of Central Excise duty on procurement of capital goods and taking of cenvat credit was due to the bonafide mistake and not by reason of fraud, collusion or any willful mis-statement or suppression of facts. Thus, the submissions of the counsel is that penalty cannot be imposed on the appellant since the entire amount of cenvat credit was reversed before issuance of the show cause notice and the amount of interest, which is penal in character, has also been paid before adjudication of the matter.

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

5. We have heard the ld. Counsel for both sides and examined the case records.

6. It is an admitted fact on record that in terms of conditions contained in the EPCG license, the appellant was entitled for the benefit of Terminal Excise Duty and there was no requirement of payment of Central Excise Duty on procurement of capital goods on the basis of invalidation letters issued by the DGFT. However, the appellant had purchased the goods on payment of Central Excise Duty and

availed cenvat credit of such duty paid on the capital goods. Since the appellant has reversed the cenvat credit before issuance of show cause notice and also paid interest attributable to such late reversal of cenvat credit, we are of the opinion that penalty cannot be imposed on the appellant, in view of the fact that there was no element of suppression, fraud, collusion etc, with intent to avail wrong cenvat credit.

7. Therefore, we do not find any merits in the impugned order so far as imposition of penalty is concerned. Accordingly, we set aside the impugned order and allow the appeal of the appellant to the extent of imposition of penalty in the adjudication order.

(Pronounced in the open court on __20.02.2017_)

(Ashok K. Arya)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Sakshi