CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 22.05.2017

Excise Appeal No. 60185 of 2013

(Arising out of order in original No. 25/Commr/IND/CEX/2013 dated 30.07.2013 passed by the Commissioner, Customs, Central Excise & Service Tax, Indore).

M/s Texmo Pipes and Products Limited Appellant

Vs.

CCE&ST, Indore Respondent

Appearance:

Sh. Rohit Choudhary, Advocate for the appellant
Sh. B. K. Mishra, AR for the Respondent

Coram:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.53401/2017

Per: **B. Ravichandran**:

The appeal is against order dated 30.07.2013 of Commissioner of Central Excise, Indore. The appellant are engaged in the manufacture of PVC pipes and the products, liable to Central Excise duty. They are availing credit of duty paid input, capital goods in terms of Cenvat Credit Rules, 2004. There was a major fire accident in the premises of the appellant-factory on 21.03.2011. The fire destroyed large quantities of duty paid raw material on which credit has been availed by the appellant. An insurance survey was conducted and the appellant calculated the loss of duty paid inputs and credit availed on such inputs, accordingly reversed an amount of Rs.2,02,22,908/- towards credit on lost raw material. The reversal was effected in the month of August, 2011. Proceedings were initiated against the appellant to recover cenvat credit of Rs.2,25,90,365/- and for imposing penalties on the appellant. The case was adjudicated. The Commissioner vide the impugned order held that the appellants have to reverse a credit of Rs.2,02,22,908/- attributable to the loss due to fire accident. He dropped the demand for reversal of credit of Rs. 23,67,457/-. The credit already reversed was appropriated towards the liability. The original authority also imposed a penalty of Rs. 5,000/- under Rule 27 of Central Excise Rules, 2002 and imposed amount equal to credit as penalty under Rule 15(1) of Cenvat credit Rules, 2004. He ordered for recovery of interest of Rs. 13,87,035/- in terms of Rule 14 of Cenvat Credit Rules, 2004.

2. Ld. Counsel for the appellant submitted that they are only contesting the penalty and interest liability confirmed by the impugned order. The Cenvat credit is not available to them due to loss of input by fire accident, is not in dispute. It is the case of the appellant that there is no ground at all, to impose equal amount of penalty for loss of raw material due to fire accident. Regarding the interest liability, ld. Counsel submitted that the factory suffered hugely due to fire accident and manufacturing process started in a phased manner, gradually. He admitted that if part of these credit was utilised for discharging duty of final product, the appellant shall

accordingly calculate interest on that part and pay the same. He submitted that there can be no interest on the whole credit reversed.

3. Ld. AR reiterated the findings of the lower authority and submitted that there is a delay in reversal of credit and during the period of delay the appellant should suffer interest.

4. We have heard both the sides and perused appeal records. Admittedly, the amount of credit reversable due to fire accident of the input, is not in dispute. We are not able to appreciate the reasons for imposing equal amount of penalty on the appellant under Rule 15(1) of Cenvat credit Rules, 2004. The fire accident has been duly intimated. After completion of all formalities with the insurance survey, the quantum of credit is arrived at and the same is reversed.

5. We have perused the reason regarding the imposition of penalty. There is no tenable or sustainable reason at all, recorded in the impugned order. The said order recorded with the appellant utilised the cenvat credit lying in balance and hence they are liable to penalty. We find no legal justification for imposing equal amount of penalty in case of loss of duty paid inputs, due to fire accident. We find the penalties are not legally justified and accordingly set-aside the same.

6. Regarding the interest liability of the appellant, we note that neither the notice nor impugned order mentioned the amount of

credit actually utilised towards discharge of duty of final product. As admitted by the appellant, it is clear that interest liability will arise in case the appellant have utilised any portion of credit availed and available in their books, attributable to the inputs lost in fire accident. This can be verified by the jurisdictional officer to ascertain the interest liability, if any. While examining this cenvat credits available on various heads, inputs, capital goods and input services are to be taken into consideration.

7. With the above observation, the appeal is allowed with reference to penalties imposed on the appellant. Interest, liability, if any, shall be in terms of above verification.

(Dictated and pronounced in the open Court).

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Pant