IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-SM

COURT –III

Excise Appeal No.E/57279/2013 [SM]

[Arising out of Order-in-Appeal No.10/APPL/LTU/2013 DATED 01.02.2013 passed by the Commissioner of Central Excise ltu, New Delhi]

M/s. Havells India Limited …Appellant

Vs.

C.C.E., Delhi … Respondent

Present for the Appellant : Mr.J.P. Kaushik , Consultant
Present for the Respondent: Mr.G.R. Singh, D.R.

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

Date of Hearing/Decision: 13.06.2017

FINAL ORDER NO. 54124/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 01.02.2013 passed by the Commissioner of Central Excise, New Delhi, upholding the penalty imposed in the Adjudication order.

2. Brief facts of the case are that the appellant is a manufacture of Electric Motors falling under Chapter 85 of the Central Excise Tariff Act, 1985. During the disputed period, the appellant had imported certain plant and equipments and availed cenvat credit on various items falling under different Chapters of the Tariff Act. On scrutiny of the records maintained by the appellant, the Department observed that the

classification of the goods declared by the appellant are not confirming to the definition of capital goods contained in the Cenvat Credit Rules, 2004. On receiving the intimation from the Department, the appellant had reversed the cenvat credit alongwith interest attributable to wrong availment of cenvat credit. Accordingly, the Department after initiation of show cause proceedings, confirmed the cenvat demand alongwith interest and also imposed penalty on the appellant.

3. The ld. Advocate appearing for the appellant submits that since the entire cenvat credit was reversed, interest amount was deposited by the appellant before issuance of show cause notice, there was no requirement of issuance of any show cause notice in terms of Section 11A (2B) of the Central Excise Act, 1944. He further submits that there is no element of suppression, mis-statement, fraud etc. in availment of cenvat credit, and thus, the benefit of Section 11A (2B) *ibid* should be available to the appellant. In this context, the ld. Advocate has relied on the Final Order No.53604/2017 dated 29/05/2017 passed by this Tribunal in the case of appellant itself. The ld. Advocate further submits that the irregularly availed cenvat credit has not been utilized for clearance of the final product. To support such stand, ld. Advocate has produced the extract of RG-23 C Register before the Tribunal.

4. On the other hand, the ld. D.R. appearing for the respondent reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. The fact is not under dispute that the disputed cenvat credit was taken by the appellant and recorded in the cenvat Register maintained by it. Further, it is also a fact on record that the irregularly availed cenvat credit has not been utilized for payment of Central Excise duty on removal of the final product from the factory. Thus, mere entering the cenvat amount in the Register, without its utilization, cannot call for invocation of Rule 15 *ibid* read with Section 11 AC *ibid* for imposition of penalty. Thus, I am of the view that upon reversal of the cenvat credit and on payment of the interest amount thereon, there was no necessity for issuance of any show cause notice for confirmation of the penalty alone. In other words, the matter has to be statistically closed for all practical purposes upon reversal of cenvat credit and on payment of the interest amount.

7. In view of above discussion and analysis, I do not find any merits in the impugned order so far as imposition of penalty is concerned. Accordingly, the same is set aside to the extent of confirmation of penalty under Rule 15 (2) ibid and the appeal is allowed in favour of the appellant to such extent.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita