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

Excise Appeal No. 50827 of 2017

[Arising out of Order-in-Appeal No. 5/2017 dated 13.2.2017 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur]

M/s. Cords Cables Industries Ltd. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Jaipur

Appearance:

Shri P K Mittal, Advocate for the Appellants
Ms. K V Kumar, AR for the Respondent

CORAM:

Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of **Hearing/ Decision: 04.07.2017**

FINAL ORDER NO. 55036 /2017

Per: V. Padmanabhan:

The appeal is against the order in appeal No. 5/2017 dated 13.2.2017. The appellant is engaged in manufacture of electric wire and cables. They procured certain quantity of raw material at concessional rate of duty under notification No. 43/2012-CE(NT) dated 26.1.2001. Such procurement was undertaken for manufacture of goods for export. Since the export order got cancelled, the condition of notification could not be satisfied. Accordingly, appellant paid the applicable Central Excise duty payable on the raw material amounting to Rs.11,05,939/- vide GAR-7 challan and availed cenvat credit of the said amount. Department was of the view that such credit availed was improper inasmuch as GAR-7 was not a prescribed document for availing the cenvat credit. The show cause notice was accordingly issued and adjudicated by original adjudicating authority vide its order dated 18.1.2012. When the order was challenged before Commissioner (Appeals), he dismissed the appeal filed against the impugned order. Aggrieved by the decision, the present appeal has been filed.

2. Shri P K Mittal, learned Counsel for the appellant submitted that the impugned order has been passed dismissing their appeal for non-compliance of pre-deposit in terms of section 35F inspite of the fact that the entire duty demanded by the original authority stand paid by way of appropriation of the amount from refund payable to them. The said fact was duly intimated to the Commissioner (Appeals) vide their letter dated 05.06.2013. However, the same has not been taken note of in the impugned order and the appeal was dismissed for non-compliance of pre-deposit in terms of section 35F. He further submits that learned Commissioner has also recorded the findings to the effect that cenvat credit was not allowable since the credit has been availed on the basis of documents which is not specified for the purpose. Accordingly, he submits that the impugned order be set aside.

3. Learned DR submitted that the impugned order has been passed dismissing the appeal for non compliance of the pre-deposit condition under section 35F. It was further submitted that the terms of Commissioner (Appeals)'s order dated 28.5.13 for pre-deposit of Rs.10,00,000/- was not substantially complied with by the appellant.

4. Learned Commissioner (Appeals) vide his interim stay order dated 28.11.2013 ordered for a pre-deposit of an amount of Rs.10 lakh. From the intimation dated 5.6.2013 submitted by the appellant to the Commissioner (Appeals), it is seen that entire duty demand of Rs. 11,05,939/- stand appropriated out of amounts payable to the appellant by way of refund. Such intimation does not appear to have been taken note of by the Commissioner (Appeals) while passing the impugned order. In view of this, I am of the view that there is compliance under section 35F. Hence, I find it appropriate to decide the issue on merits also.

5. Learned Counsel has placed on record an order passed by the Tribunal ***Cords and Cable Industries Ltd. vs. CCE & ST, Jaipur [Final Order No. A/50944/2015 (BR) dated 26.2.2015]*** wherein an identical issue for a different period came before the Tribunal in which such cenvat credits stand allowed as follows:

> *"4. As there is no dispute that the inputs were excisable and under bond, the appellant procured these goods duty free but manufactured goods had been cleared on payment of duty. In these circumstances, the inputs which have been procured by*

> *the appellant duty free, is entitled to take Cenvat credit thereon. In these circumstances, I hold that appellant has correctly taken the Cenvat credit of inputs attributed to export goods cleared in domestic market by way of debit entry in RG 23A Part II register. In these circumstances, I set aside the impugned order and allow the appeal with consequential relief, if any."*

6. By following the earlier decision of the Tribunal, the impugned order is set aside and appeal is allowed with consequential relief to the appellant, if any.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

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