CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 23.10. 2017

Ex. Appeal No. 51737 of 2016
(Arising out of order-in-appeal No. BHO-EXCUS-002-APP-323-15-16 dated 09.02.2016 passed by the Commissioner (Appeals) Customs, Central Excise & Service Tax, Raipur).

M/s Rockwool Industries Appellant

Vs.

CCE, Delhi-II Respondent

Appearance:

Sh. N. K. Gupta with Sh. Sandeep Garg, Advocates for the assessee
Sh. R. K. Mishra, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 57438/2017

Per: **V. Padmanabhan**:

The present appeal is filed against the order-in-appeal No. BHO-EXCUS-002-APP-323-15-16 dated 09.02.2016 passed by the Commissioner (Appeals) Customs, Central Excise & Service Tax, Raipur. The period of dispute is June 1997 to July 2005.

2. The brief facts of the case are that during the period under consideration, the appellant was engaged in the manufacture of rockwool, slag wool and articles thereof by claiming classification under Central Excise Tariff 6807.10 of the

Central Excise Tariff Act. It was claimed that the said goods were manufactured by the appellant with more than 25% by weight of blast furnace slag so the rate of duty comes to NIL as per the ratio laid down by the Hon'ble Supreme Court in the case of ***CCE, Bhopal vs. Minwood Rock Fibres Ltd. – 2012 (2) TMI 289 (SC)***. The appellant has reversed the cenvat credit which was availed as a matter of precaution. The department has allowed the same but levied the penalty and interest. Being aggrieved, the present appeal is filed by the appellant.

3. With this background, we heard Sh. N. K. Gutpa, ld. Advocate for the appellant and Sh. R. K. Mishra, ld. AR for the department.

4. The issue of dutiability of the goods manufactured by the appellant stands settled by the Hon'ble Supreme Court and the benefit of exemption Notification No. 5/98-CE dated 02.06.1998 (Sl. No. 164) and other succeeding notifications stand extended. During the period of dispute, the appellant availed cenvat credit. However, the same stands reversed subsequently, upon decision of the Apex Court. The lower authorities have held that part of cenvat credit availed by the appellant was utilised by them before reversal of the same and hence held that interest will be payable for the period from when the credit was taken to the time credit reversed. Penalty was also imposed by taking the view that the credit taken was improper.

5. After going through the record of the case, we are of the view that the dutiability of the goods manufactured by the appellant was in dispute and hence the assessee cannot be held liable for availing cenvat credit as a precautionary measure. We also note that the cenvat credit availed also stands reversed. Under

the circumstances, we are of the view that interest will be chargeable in respect of credits utilised by the appellant before its reversal. However, keeping in view the fact that there was a long pending dispute on dutiability, we find no justification to impose penalty on the appellant and hence we set aside the penalty imposed by the lower authorities.

6. In view of above discussion, the appeal is allowed partially and impugned order is modified.

(Dictated and pronounced in the open Court).

(Justice (Dr.) Satish Chandra) President	(V. Padmanabhan) Member (Technical)

Pant