IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/ Decision: 31.10.2017

Appeal No. E/52633/2016- EX[SM]
(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-042-16-17 dated 03.05.2016 passed by the Commissioner (Appeals), Central Excise Bhopal)

Quality Agencies — Appellant

Vs.

CCE & ST- Bhopal — Respondent

Appearance

None - for the appellant

Ms. Kannu Verma Kumar, AR - for the respondent

CORAM: **Hon'ble Mr. M.V. Ravindran, Member (Judicial)**

Final Order No. 57509/2017

Per M.V. Ravindran :

1. This appeal is directed against the Order-in-Appeal No. 42-16-17 dated 03/05/2016.

2. None appeared on behalf of the appellant despite notice.

3. Since the matter is of 2016 I take up the same for disposal in the absence of any representation.

4. Heard the Ld. Departmental representative and perused the records.

5. It transpires from the records that the appellant is contesting the imposition on penalty only in the Adjudicating Authority's order and upheld by the First Appellate Authority. It is seen from the orders that the penalty has been imposed under Section 11 AC of

the Central Excise Act, 1944 while show cause notice seeks to impose penalty under Rule 15 of the Cenvat Credit Rules, 2004.

6. It is on records and undisputed that the appellant herein had issued invoices during the period 2006-2010 in respect of the Customs Duty and the Cesses. The appellant herein is a first stage dealer and can issue the invoice only passing of the Cenvat credit in respect of the duties which can be passed on to purchasers. Since it is undisputed the Custom duty and Cesses which has been passed on by the appellant could not have been done so, I find that there is violation of the provisions of Central Excise Rules, 2002. Though the lower Authorities have imposed penalty under Section 11AC of the Central Excise Act, 1944, I find that the Penal provisions under Rule 26 of the Central Excise Rules, 2002 gets attracted in the case in hand in as much that there is passing of ineligible Cenvat credit by the appellant to their purchasers. Accordingly, I hold that the penalty imposed is correct but it should be under provisions of Rule 26 of the Central Excise Rules, 2002.

7. In view of the foregoing, the appeal stands dismissed.

(Order dictated and Pronounced in open Court)

(M.V. Ravindran)
Member (Judicial)

Rekha