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

COURT-IV

Date of hearing: 13.02.2018

Appeal No. E/2668/2012-EX[SM]
[Arising out of the Order in Appeal No. 25/AKJ/CE/JPR-II/2012 dated 12/06/2012 passed by the Commissioner, Commissioner of Central Excise-JAIPUR-II (Appeal)]

M/s Scordodite Stainless India Pvt. Ltd. … Appellant

Vs.

CCE, Jaipur … Respondent

Appearance:
Present Shri O.P. Agarwal, DR for the appellant
Present Shri U. Sengraj, Advocate for the respondent

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)

FINAL ORDER No. 50689/2018

Per S.K. Mohanty

1. This appeal is directed against the impugned order dated 12/06/2012 passed by the Commissioner, Central Excise (Appeals), Jaipur. The grievance of the appellant is that the amount of Rs. 94,660/- reversed by it on 31/03/2010 was not considered by the authorities below and Cenvat demand of Rs. 56,841/- was confirmed along with equal amount of penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

2. The Ld. Advocate appearing for the appellant submits that since the appellant had already reversed the Cenvat Credit, it is not required to pay the adjudged amount confirmed by the Department. He further submits that since due to inadvertence, the appellant had taken irregular credit and the same was reversed subsequently, the charges of fraud, collusion etc, cannot be leveled against the appellant for imposition of penalty under Rule 15 (2) *ibid.* To support such stand, the Ld. Advocate has relied on the decision of this Tribunal in the case of ***Softesule Pvt. Ltd. V/s CCE, Mumbai-III 2015-TIOL-194-CESTAT-MUM.***

3. On the other hand, Ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides.

5. I find that the submissions of the appellant that it had reversed an amount of Rs. 94,660/- on 31/03/2010 has not been discussed or addressed by the authorities below. In view of the fact that such amount has already been reversed, as claimed by the appellant, the said amount cannot be confirmed again by the authorities below. Since the factual aspect of reversal of Cenvat Credit has not been disputed by the authorities, I am of the view that the matter should go back to the Original Authority for verification of such reversal particulars and for confirmation, whether such reversal has any bearing on Cenvat demand confirmed in the adjudication order. While passing the fresh adjudication order, the adjudicating authority should also examine the decision of this Tribunal in the case of Softesule Pvt. Ltd. (supra) for proper appreciation, whether penalty can be imposed on the appellant under Rule 15(2) *ibid*.

6. In the result, the appeal is allowed by way of remand to the Original Authority.

[Order dictated and pronounced in the open court]

(S.K.Mohanty)
Member (Judicial)

Rekha