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

Date of hearing/decision: 31.05.2018

Ex. Appeal No. 50701 of 2018-SM
(Arising out of Order-in-original No. RPR/EXCUS/000/COM/ CEX/059/ 2017 dated 20.11.2017 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Raipur).

M/s Shree Cement Limited Appellant

Vs.

CCE, Jaipur Respondent

Appearance:

Ms. Rinki Arora, Advocate for the appellant
Sh. H. C. Saini, AR for the Respondent

Coram:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Final Order No. 52109/2018

Per: **Archana Wadhwa**:

The challenge in the present appeal is only to penalty of Rs.2 lakhs imposed upon the appellant in terms of Rule 15(1) of the Cenvat Credit Rules.

2. As per facts on record, the appellant is engaged in the manufacture of cement and were availing benefit of cenvat credit on duty paid of their raw material procured from 100% EOU. The said credit is required to be availed in terms of formula prescribed in the Rules. The formula prescribed for adoption of 25% of the Custom duty, while calculating the total amount of credit to be availed by an assessee. The said 25% was enhanced to 50% in December, 2008. However, the appellant availed the credit by adopting 50% of the value, even for the period prior to

December, 2008, by entertaining a view that the said enhancement is retrospective.

3. In the above background, proceedings were initiated against them resulting in passing of an order by the Commissioner who confirmed inadmissible cenvat credit amount of Rs. 17.64 lakhs alongwith confirmation of interest and imposition of penalty of Rs. 2 lakhs.

4. Ld. Advocate for the appellant submits that though in their appeal memo they have challenged the denial of the credit also but fairly agrees that in the case of M/s ***J. K. Lakshmi Cement Limited vs. CCE, Jaipur-II-*** Final Order No. 50567/2018 dated 12.01.2018, the identical pleas of the other assesses were rejected. As such, she is limiting her argument only to the penalty part, which stands set aside in the earlier decided case of M/s J.K. Lakshmi Cement.

5. Ld. AR for the Revenue reiterated the reasoning of the authority below.

6. I find that the appellant is only praying for setting aside the penalty. In identical circumstances, the Tribunal, in the above referred case of M/s ***J. K. Lakshmi Cement Limited*** has set aside the penalty by observing as under:-

> "*8. In this case, since the appellant has taken Cenvat credit due to wrong interpretation of the statutory provisions, it cannot be said that it had indulged into the activities of fraud, collusion etc. Therefore, in my considered view, the provisions of Rule 15 of the Cenvat Credit Rules, 2004 cannot be invoked against the appellant for imposition of penalty.*

> *9. In view of the above discussions and analysis, I do not find any infirmity in the impugned order, so far as it confirmed the Cenvat credit and interest demand on the appellant. Accordingly, the appeal to such an extent is dismissed. The appeal is partly allowed to the extent of setting aside the penalty imposed on the appellant*."

7. By following the above order, I confirm the denial of credit and confirmation of interest but set aside the penalty imposed upon the appellant.

8. Appeal is disposed of in the above terms.

(Dictated and pronounced in the open Court).

(Archana Wadhwa)
Member (Judicial)

Pant