CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH-COURT NO. 2

Excise Appeal No. 53178 of 2018-[SM]

(Arising out of Order-in-Appeal No. 336-SM-CE/JPR/2018 dated 20.07.2018 passed by Commissioner of Central Excise,(Appeals) Jaipur)

M/s Perma Engineering & Trading Co. Pvt. Ltd **Appellant**
G-468-469, RICCO Industrial Area, Bhiwadi (Distt. Alwar).

Versus

Commissioner of Central Excise, Alwar **Respondent**
Á'Block, Surya Nagar, Alwar (Rajasthan)

Appearance
Shri S. Jaikumar with Kartik Jindal, Advocates for the appellant
Ms. Tamana Alam, Authorized Representative for the respondent

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**

Date of hearing/Decision: 28.05.2019

Final Order No. 51226/2019

Per Anil Choudhary

The issue in this appeal is for the refund of excess duty paid whether the same is rightly rejected under the fact that the appellant was operating under compounded levy scheme under Notification No. 17/2007-CE read with Rule 15 of CCR, 2004.

2. Brief facts are that M/s Perma Engineering & Trading Co. Pvt. Ltd. G 468-469, RIICO Industrial Area, Phase-I, Bhiwadi,

(hereinafter referred to as 'appellant' also) holding Central Excise Registration No. AAACP4439PXM001 are engaged in the manufacture of stainless Steel patta/patti in terms of Notification No 17/2007-CE dated 1.03.2007 issued under Rule 15 of the CCR, 2002.

3. The appellant had six rolling machines in their factory. The appellant paid Central Excise duty of Rs. 40,000/- per month per cold rolling machine for the months of October, 2015, November, 2015 and December, 2015. Later on they filed for refund of an amount of Rs. 1,60,000/- on the ground that they had installed and operate only five cold rolling machines in the month of October, 2015, four cold rolling machines in the month of November 2015 and five cold rolling machines in the month of December, 2015. Thus, duty in respect of machines not installed and/or operated cannot be levied, as it is against the law. Since it would be in contradiction to charging Section 3 of the Central Excise Act, 1944 which says that duty is leviable on the manufacture of excisable goods. The department rejected the said refund vide impugned order on the ground that the appellant have installed and operated six cold rolling machines during the period from October, 2015 to December, 2015, therefore, as per para 3(2) of the said Notification, the appellant were liable to pay duty for six cold rolling machines (maximum number of cold rolling machines installed at any time during three calendar months immediately preceding the calendar month for which duty is to be paid) during the said period.

4. The Commissioner (Appeals) observed that from the provision contained in Notification 17/2007-CE as amended, there is no specific provision to find the leviablity of duty in case of increase/decrease in the number of cold rolling machines in the factory. Further observed that Clause 3 (2) of the said Notification reads – the sum payable under sub paragraph 1 shall be calculated by application of the appropriate rate to the maximum number of cold rolling machines installed by or on behalf of such manufacturers in one or more premises at any time during three calendar months immediately preceding the calendar months in which the application under paragraph 2 is made. Paragraph 2 of the Notification prescribes that a manufacturer shall make an application in the form specified in appendix 1 to the Notification to the Range Superintendent, as the case may be, for this purpose, and the Superintendent may grant permission for the period in respect of which the application has been made.

5. Learned Counsel states that it is admitted fact that the appellant was working with six cold rolling machines till 30 September, 2015. On 30 September, 2015 they informed the Department that they are stopping production on one machine and the same was dismantled and removed to the store. Thus for the month of October they operated only 5 machines. Similarly, on 1 November, 2015 under proper intimation to the Department they dismantled one more machine and thus for the month of November they operated and manufactured on only four cold rolling machines. With effect from 1 December, 2015 they again added back one machine under proper intimation and thus for the

month of December they operated total five operative cold rolling machines. However, the appellant kept depositing the duty at the rate of Rs. 40,000/- per machine for six machines, for each of the machine, in the month of October, November and December, 2015, and was, accordingly, entitled to refund of the excess duty paid duty of Rs. 40,000/- for October, Rs. 80,000/- for November, 2015 and Rs. 40,000/- for the month of December 2015. The learned Counsel for the appellant further states that Commissioner (Appeal) have erred in holding that there is no provision for redetermination of duty payable in case of increase/decrease in the number of operating machines. The learned counsel have relied upon the decision of Division Bench ruling of this Tribunal in case of M/s **Paradise Steel Private Limited vs. CCE, & CGST, Jaipur vide Final Order No. 52751 of 2018 dated 10 July, 2018 in Excise Appeal No. 51414 of 2018** the Division Bench under similar facts and circumstances, where refund was claimed for part of the month, that is for the number of days when machine was not working in a given month this Tribunal, following ruling of Hon'ble Rajasthan High Court in **Commissioner of Customs & Excise, Jaipur vs. Jupitar Industries [2006 (206) ELT 1195]** where Hon'ble High Court held that an assessee is not required to pay duty on a machine for the number of days it seized to produce the goods, under proper intimation to Revenue. Accordingly, this Tribunal held- on the machine being inoperative for the part of the month after payment of central excise duty, in such case duty cannot be charged under the compound levy for full month. Accordingly, the Tribunal allowed the appeal with consequential benefits.

6. Accordingly, the learned counsel prays for allowing of appeal.

7. The learned AR for Revenue has relied upon the impugned order.

8. Having considered the rival contentions, I find that the facts herein are squarely covered by the precedent ruling of this Tribunal of Division Bench in **Paradise Steel Private Limited (supra)**

9. Accordingly, the impugned order is set aside and the appeal is allowed.

10. The appellant is entitled to refund of the excess amount of duty paid in the month of October to December, 2015 as noticed hereinabove.

11. The Adjudicating Authority is directed to grant refund within the period of 60 days from the date of receipt the copy of this order along with interest as per Rules.

(Dictated and pronounced in open court)

(Anil Choudhary)
Member (Judicial)

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