

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Single Member Bench

Court – I

Excise Appeal No. 31318 of 2018

(Arising out of Order-in-Appeal No.TTD-EXCUS-000-APP-034-18-19 dt.26.07.2018 passed
by CCCE & ST, Visakhapatnam)

Wipro Enterprises Limited,

Plot No.226/C & D, APIIC Growth Centre,
Thumkumta Hindupur, Anantapur District,
Andhra Pradesh – 515 211

.....Appellant*VERSUS***Commissioner of Central Tax,
Tirupati - GST**

Tirupati Commissionerate, West Church Compound,
MR Palli Road, Chittoor, AP – 517 507

.....Respondent**Appearance**

None for the Appellant.

Shri L.V. Rao, Authorized Representative for the Respondent.

Coram:**HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)****FINAL ORDER No. A/31115/2019****Date of Hearing: 05.12.2019****Date of Decision: 05.12.2019****[Order per: P.V. SUBBA RAO.]**

1. None appeared on behalf of the appellant despite the matter being listed. It is seen from the records that the appellant had not been represented during the previous hearings also. Heard the learned departmental representative and perused the records of the case and proceed to decide the matter on merits.

2. This appeal is filed by the appellant against Order-in-Appeal No.TTD-EXCUS-000-APP-034-18-19 dt.26.07.2018.

3. The appellants are manufacturers of Hydraulic Cylinders falling under CETH 8412 1000 of the Central Excise Tariff and are registered with the Central Excise department. During scrutiny of the Cenvat credit availed by the appellant, the department observed that they had availed Cenvat credit of Rs.7,614/- on the same invoice twice in the month of June 2014. The department further observed that they had short paid Cenvat credit of Rs.9,869/- on capital goods cleared after putting them to use. Accordingly, a show cause notice dt.18.04.2016 was issued proposing to recover irregularly availed Cenvat credit under Rule 14 of Cenvat Credit Rules (CCR), 2004 read with section 11A(4) of the Central Excise Act. It was further proposed to impose a penalty under Rule 15(2) of CCR, 2004 read with section 11AC. The appellant had not disputed the fact that they had availed Cenvat credit twice on the same invoice and also had short paid Cenvat credit on capital goods removed after being put to use. However, they contended that they have reversed the aforesaid amounts on being brought to their notice by the department. Therefore, they argued that no penalty should be imposed upon them. After following due process, the adjudicating authority confirmed the demands and appropriated the amounts already reversed by the appellant. He also imposed a penalty of Rs.7,614/- and Rs.9,869/- under Rule 15(2) of CCR, 2004 read with section 11AC(1) of the Central Excise Act, 1944. Aggrieved, the appellant filed an appeal before the first appellate authority who, upheld the order of the lower authority and rejected the appeal. Hence, this appeal. In this appeal they are contesting the imposition of penalty on the ground that they had no intention to evade payment of Cenvat credit and they had already reversed the amounts on being pointed out by the department. They had further contended that they had sufficient balance in their Cenvat credit account.

4. Learned departmental representative supports the impugned order and argues that it is not in doubt that the appellant had availed Cenvat credit twice on the same invoice which was in complete violation of any provisions of CCR, 2004. This would have gone unnoticed if there was not an audit by the department. This shows that the appellant had the intention to evade ineligible Cenvat credit without backing of any document and has put such intention to practice. When caught, he reversed the Cenvat credit.

Similarly, he has not reversed Cenvat credit on the capital goods fully while removing them. This shows the intention of the appellant to evade wrongly availed Cenvat credit and thereby evade payment of excise duty to that extent. The mere fact that they have reversed the amounts on being caught does not render the appellant innocent. It is not in doubt that the availment of Cenvat credit and non-reversal of Cenvat credit fully on clearance of capital goods was in violation of the Act and Rules. Therefore, the penalty has been correctly imposed.

5. I have considered the arguments on both sides and perused the records. I have no doubt that the appellant had wrongly availed Cenvat credit twice in the same invoice. It is not the case where one could have a doubt about the admissibility of such Cenvat credit. Evidently, nobody can legitimately claim Cenvat credit twice on one invoice. Similarly, with respect to the capital goods removed after use, they have reversed inadequate amount of Cenvat credit which remains undisputed. In this factual matrix, I find that the intention is self evident and the violation of Act and Rules are undisputed. Therefore, I find no infirmity in the impugned order.

6. The appeal is rejected and the impugned order is upheld.

(Operative part of this order was pronounced in the open court
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)