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

Division Bench

Court – I

Excise Appeal No. 354 of 2009

(Arising out of Order-in-Original No.13/2008-09 (RS) dt.29.12.2008 passed by CCCE, Visakhapatnam - I)

Concast Ferro Inc
Dusi Village, Srikakulam District,
Andhra Pradesh – 532 484 **......Appellant**

VERSUS

Commissioner of Central Tax,
Visakhapatnam - GST
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Respondent**

and

Excise Appeal No. 273 of 2009

(Arising out of Order-in-Original No.13/2008-09 (RS) dt.29.12.2008 passed by CCCE, Visakhapatnam - I)

Commissioner of Central Tax,
Visakhapatnam - GST
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Appellant**

VERSUS

Concast Ferro Inc
Dusi Village, Srikakulam District,
Andhra Pradesh – 532 484 **......Respondent**

Appearance

None for the Assessee.
Shri L.V. Rao, Authorized Representative for the Revenue.

Coram:

HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30707-30708/2020

Date of Hearing: 23.01.2020
Date of Decision: 23.01.2020

[Order per: P. VENKATA SUBBA RAO.]

1. Appeal E/273/2009 has been filed by the Revenue and appeal E/354/2009 has been filed by the assessee against the same impugned order No. 13/2008-09 (RS) dt.29.12.2008. Accordingly, both the appeals are being disposed of together.

2. None appeared on behalf of the assessee. Heard the learned departmental representative and perused the records.

3. The facts of the case in brief are that the assessee is registered with the Central Excise department and are availing Cenvat credit under Cenvat Credit Rules (CCR), 2004. While scrutinising the ER-1 monthly returns of the assessee for the period May, 2005 to April, 2006, it was noticed that the assessee has taken 100% Cenvat credit on pig iron moulds falling under Chapter 84 of Central Excise Tariff Act, 1985 by declaring them as inputs. Verification of the actual usage of these moulds showed that they were attached to the main machinery and are used to carry hot molten pig iron metal received from tapping crucible to unloading point. Therefore, they are in the nature of capital goods and not in the nature of inputs. Accordingly, as per Rule 4(2)(a) of CCR, 2004, as applicable during the relevant year, the assessee was entitled to take Cenvat credit of only 50% of the total Central Excise duty paid on the moulds during the financial year. They could have taken the remaining credit of 50% during the following year. As the assessee has contravened the provisions of Rule 4(2)(a) of CCR, 2004, a show cause notice was issued proposing to recover the Cenvat credit so taken on the pig iron moulds along with interest under Rule 14 of CCR, 2004 read with Section 11A and 11AB of the Central Excise Act, 1944. It was also proposed to impose penalties upon them under Rule 15(1) and (2) of CCR, 2004.

4. After following due process, learned Commissioner passed the impugned order holding that it was not in dispute that the credit sought to be disallowed by the show cause notice amounting to Rs.73,00,537/- and credit of Education Cess of Rs.1,46,040/- would be available to the assessee w.e.f. 01.04.2006 i.e., during the year 2006-07. Therefore, she only

confirmed payment of interest on the wrongly availed Cenvat credit as they had taken Cenvat credit before the date on which they could have taken. Accordingly, she only confirmed an interest of Rs.5,39,380/- upon the assessee. As the assessee had already paid an amount of Rs.3,88,148/-, she ordered them to pay the remaining balance of Rs.1,51,232/- as interest on the inadmissible Cenvat credit taken during the period 2005-06. She also imposed penalty in terms of Rule 15(2) of CCR, 2004 amounting to Rs.74,46,577/- i.e., equal to the amount of total Cenvat credit which they have wrongly availed in advance.

5. Aggrieved by this order, the Revenue is in appeal on the limited ground that the amount of interest was wrongly calculated by the learned Commissioner. Of the total amount of Cenvat credit wrongly availed in advance by the appellant, an amount of Rs.1,58,202/- which was taken in April, 2006 would have been eligible to the assessee only in April, 2007. However, the learned Commissioner has calculated interest only up to 31.03.2006 even on this amount. We find it proper to remand the matter to the adjudicating authority to recomputed the correct amount of interest and we do so.

6. The assessee's appeal is seeking setting aside of penalty imposed by the learned Commissioner in the impugned order. On perusal of Rule 15(2) of CCR, 2004, it would show that it is a clause meant for imposition of penalty in cases where the Cenvat credit in respect of inputs or capital goods or input services has been taken or utilized wrongly by reason of fraud, collusion, any wilful misstatement or suppression of facts or contravention of any of the provisions of Excise Act or the rules made thereunder with intent to evade payment of duty. In this case, from the impugned order it appears that the learned Commissioner has, after going through the show cause notice, the reply in defence and other records of the case, has held that the assessee was indeed entitled to the Cenvat credit which they have availed but they have only availed it in advance. It is also clear that they have availed the credit under the head of "inputs" whereas they could have availed it only under the head of "capital goods". In fact, she allowed the entire Cenvat credit for this reason and has only demanded interest for the Cenvat credit availed well in advance. No evidence of fraud,

collusion, wilful misstatement, suppression of facts which are essential conditions for imposition of penalty under Rule 15(2) of CCR, 2004 are evident either from the SCN or from the impugned order.

7. In view of the above, the penalty imposed upon assessee under Rule 15(2) of CCR, 2004 needs to be set aside and we do so.

7. In view of the above, the appeals are disposed of as under:

(i) Assessee's appeal is allowed by setting aside the penalty imposed under Rule 15(2) of CCR, 2004.

(ii) Revenue's appeal is allowed by remanding the matter to the original authority for requantification of the interest involved after giving both sides adequate opportunity of being heard and presenting their case.

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

(Dr. D.M. MISRA)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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