CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Misc Application No. E/EH/30120/2019
(on behalf of the Appellant)
in
Excise Appeal No. 30679 of 2017
(Arising out of **Order-in-Original** No.52/2016-17 dated 23.09.2016 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Sagar Cements Ltd., .. **APPELLANT**
Matapally (Village And Mandal)
Yadagirigutta Mandal,
Nalgonda District,
Telangana – 508 204.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
& Central Excise
Hyderabad – III
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri A V L N Chary, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30078/2023

Date of Hearing:26.04.2023
Date of Decision:26.04.2023

[ORDER PER: BENCH]

The Learned Counsel submits that the issue in the present Appeal is stands decided against them by this Tribunal. He prays that the Early Hearing Petition may be allowed and the Appeal itself may be taken up. We allow the Early Hearing Petition. With the consent of both the sides the Appeal itself is taken up as the issue is within a narrow compass.

2. The Learned Advocate appearing on behalf of the Appellant submits that the issue as to whether the Appellant is eligible for CENVAT Credit on Clean Energy Cess is no more *res integra* and the same has been decided against them by this Bench in the case of Deccan Cement and Others Vs CCE, Hyderabad and Others [2019 (7) TMI 764 CESTAT Hyderabad]. Therefore, he submits that they are not contesting the issue on merits. However, he submits that in the cited case law the penalties imposed have

been set aside and accordingly he prays that in this appeal also penalties may be set aside.

3. The Learned AR submits that the issue is covered in favour of the Revenue.

4. Heard both sides.

5. This Tribunal in the case of Deccan Cements Ltd., vide the Final Order No. A/30684-30692/2019 as reported in 2019 (7) TMI 764 – CESTAT HYDERABAD has gone into the issue as to whether the Appellants are eligible to take the CENVAT Credit on Clean Energy Cess. The Tribunal has held as under:

> 21. As far as the imposition of penalties are concerned, we find that this is an interpretational issue and it is possible for the assessees to have held a genuine belief that they are entitled for Cenvat credit of CEC and hence have taken Cenvat credit. Therefore, we find that the imposition of penalty under Rule 15 of CCR, 2004 is not justified and needs to be set aside. In conclusion, the impugned orders are modified as follows:
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> A. The denial of Cenvat credit on Clean Energy Cess is upheld.
>
> B. In all cases where Cenvat credit has been availed but not utilized, no interest is payable and in cases where Cenvat credit has been availed and utilized, appropriate amount of interest is payable.
>
> C. All penalties are set aside.
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> 27. I agree with para 20 and 21 with regard to demand of interest and penalties imposed. Further, wherever refund of the unutilized credit on cess is sought, the refund is not eligible since the credit itself is wrongly availed and ineligible.

Respectfully following these case laws, we dismiss the Appeal filed by the Appellant in respect of Rs. 5,30,11,207/- taken by them as CENVAT Credit for the Clean Energy Cess. The Appeal in respect of CENVAT Credit taken on Clean Energy Cess of Rs. 5,30,11,207/- and Rs. 2,92,50,364/- is rejected. The penalty of Rs. 10 lakhs and Rs. 1 lakh imposed stands set aside.

6. Appeal allowed partly by dropping the penalties

(Order dictated and pronounced in open court)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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