**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,**
**EAST REGIONAL BENCH : KOLKATA**

**MA (COD)/75002/2018 &/MA(COD)/75278/2018**
**And**
**Appeal No. Ex/75579/2017, CO-75001/2018**

Arising out of Order-in-Appeal No. 136/KOL-V/2016 dated 14.12.2016 passed by the Commissioner of Central Excise (Appeal-I). Kolkata.

Commissioner of Central Excise, Kolkata-V

...APPELLANT(S)

VERSUS

M/s. Indian Tin Box Manufacturing Co. Private Limited.

...RESPONDENT (S)

APPEARANCE
Shri H. S. Abedin, A.C. (AR) for the Appellant (s)
Shri S. P. Siddhanta, Consultant for the Respondent (s)

**CORAM:**
**SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER**

DATE OF HEARING:-...22.02.2018

DATR OF PRONOUNCEMENT.03.04.2018

ORDER N0...M/O/75543-44/2018 & FO/75778/2018

**Per Shri P. K. Choudhary :**

Misc. application has been filed by the appellant (Revenue) for condoning the delay of Nine days in filing of the appeal before this Tribunal.

2. Heard the Ld. D.R. appearing on behalf of the Revenue.

3. For the reasons as explained in the application, the delay in filing of the appeal is condoned. M.A. allowed.

4. The Respondent assessee has also filed misc. application for condoning the delay in filing of the cross objection. For the reasons as explained in the application, the delay in filing of the cross objection is hereby allowed. Both the misc. applications are disposed of accordingly. With the consent of both sides, the appeal itself is taken up for hearing.

5. Briefly stated the facts of the case are that the assessee is engaged in the manufacture of Metal Containers and Drums, Printed Sheet, Plastic Tin Sheet etc. classifiable under Chapter 72 and 73 of the First Schedule to the Central Excise Tariff Act, 1985. A Show Cause Notice dated 17.02.2011 was issued alleging that they have taken CENVAT Credit inter alia on imported C.R. Sheets, Tin Plate and C.R. Coils which was sent directly to Job Worker for cutting and return of full quantity. After cutting, CENVAT Credit was taken against the final product. It was found that during the material period i.e. March 2006 to October 2009, when the inputs were removed as such, they have reversed lesser amount of Rs.12,08,630/- than that of the actual amount availed on

such inputs, removed as such and the said amount was utilized irregularly in contravention of the provisions of the CENVAT Credit Rules, 2004. The Adjudicating authority confirmed the demand of Rs.12,08,630/- along with interest and imposed penalty of equal amount of CENVAT Credit. By the impugned order, the Commissioner (Appeals) set aside the adjudication order. Hence, the Revenue filed this appeal. The assessee also filed cross objection.

6. Heard both sides and perused the appeal records.

7. The Commissioner (Appeals) set aside the Adjudication Order on the ground that the allegation against the assessee is that the imported inputs were sold as such. But it cannot be concluded from records that only imported raw materials are sold as such based on which, demand of Special Additional Duty (SAD) was claimed. The Revenue in the Grounds of Appeal stated that no enquiry was undertaken by the Commissioner (Appeals) while arriving at the correctness of the evidences advanced by the assessee. It is also stated that when the documents were submitted before the First Appellate

Authority by the assessee, no attempt was made to examine the genuinity of the documents.

8. The Learned Counsel for the assessee submitted that the Commissioner (Appeals) had given detailed findings of purchase of the inputs in Table –I of the impugned order. It is further submitted that the Revenue had not controverted the findings of the Commissioner (Appeals). It is also submitted that the appeal filed by the Revenue is silent on the aspect of limitation.

9. On perusal of the impugned order, I find that the Commissioner (Appeals) had given details of Purchase and Sale of the inputs during the relevant period. The Commissioner (Appeals) had merely proceeded on the basis of the statements/documents filed by the assessee and no verification was conducted.

10. In my considered view, it should be remanded to the Adjudicating Authority for the purpose of verification.

11. In view of the above discussion, the matter is remanded to the Adjudicating Authority for the purpose of verification of Purchase and Sale of the inputs as reproduced in the impugned order after giving proper

hearing to the assessee and pass order in accordance with law. Cross objection disposed of.

(Pronounced in the open court on…03.04.2018…)

**(P. K. CHOUDHARY)**
**MEMBER (JUDICIAL)**

T.K.