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

SP-76081/17 &
Cus.Appeal No.76601/17

(Arising out of Order-in-Appeal No.26/Cus/CCP/2017 dated 28.03.2017 passed by the Commissioner of Customs & Central Excise, (Appeals), Bhubaneswar)

Commr. of Central Excise & S. Tax, Rourkela
Applicant (s)/Appellant (s)

Vs.

M/s Vedanta Aluminium
Respondent (s)

Appearance:

Shri S. Guha, Asstt. Commr. (A.R.) for the Revenue(s)
None for the Respondent (s)

CORAM:
HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI V. PADMANABHAN, TECHNICAL MEMBER

Date of Hearing : 03.05.2018
Date of Decision : 03.05.2018

ORDER NO - **FO/C/A/75924/2018 & SO/75592/2018**

Per Dr. Satish Chandra.

The present appeal is filed by the Revenue against the impugned Order-in-Appeal No.26/Cus/CCP/2017 dated 28.03.2017 passed by the Commissioner of Customs & Central Excise, (Appeals), Bhubaneswar.

2. Brief facts of the case are that the respondent, a DTA Unit, has procured 1826 MTs of C.P.Coke and 20 MTs of Register Coke on payment of applicable customs duty by filing a Bill of Entry on 09.02.2012 before the authorized officer of their SEZ Unit. Subsequently, the respondent noticed that out of 1826 MT of C.P.Coke only declared in B/E, they had procured 828 MTs, leaving a shortage of

998 MTs.. As they had paid customs duty on the total quantity of 1826 MTs., they filed a refund application dated 23.01.2013 before the specified officer of SEZ claiming refund of Rs.60,47,595/- for the short receipt quantity of 998 MTs.. On following due procedure of law, refund of Rs.60,47,595/- was sanctioned vide O-in-O No.VAL/SEZ/Refund/01/SO/13-14/01 dated 08.05.2014. Aggrieved, the appellant-department has filed the instant appeal on various grounds. On the other hand, the respondent has submitted that the specified officer has passed a reasoned order which may be maintained. The original authority as well as the Commissioner (Appeals) has granted the relief to the respondent. Being aggrieved, the Revenue has filed the present appeal.

3. With this background, we have heard Shri S. Guha, ld.A.R. for the Revenue. None appeared for the Respondent.

4. After hearing the ld.A.R. for the Revenue and on perusal of record, it appears that the Department has alleged that the specified officer (i.e Refund Sanctioning Authority) has not taken into account the examination report and the pass out order of the authorized officer appended on the reverse of the Bill of Entry. As because, the respondent has not taken cenvat credit on the quantity, would not mean that it has received a short quantity, on which no credit has been availed. Perusal of the duplicate copy of the Bill of Entry filed along with appeal memo shows that the authorized officer has given pass out order on 13.02.2012 on the reverse of the Bill of Entry, in which no mention of quantity has been endorsed. There is no provision in the customs procedure that the authorized officer, at the

time of pass out order, has to record the quantity of goods taken clearance from the Bill of Entry.

5. As against the above grounds raised by the Revenue in the present appeal, we note that the Commissioner (Appeals) in the impugned order has carefully considered the issue and given detailed findings. He has held that for want of procedural complaints, such as, filing of triplicate copy of the Bills of Entry etc., the refund claim cannot be rejected. On the basis of the documentary evidences presented by the respondents, he concluded that the respondent, in fact, has not dispatched the quantity of 998 MTs. Of CP Coil to the DTA Unit on account of the fact that sufficient stock was not present in the silos of the SEZ Unit.

6. We find no reason to interfere with the impugned order of the Commissioner (Appeals).

7. In the result, the appeal filed by the Revenue is dimissed. Stay petition also gets disposed off.

(Dictated and pronounced in the open court.)

Sd/	Sd/
(V.Padmanabhan)	**(Justice Dr. Satish Chandra)**
Member (Technical)	**President**

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