IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.E/83/2008

(Arising out of Order-in-Appeal No.95/KOL-III/2007 dated 22.10.2017 passed Commissioner of Central Excise (Appeal-I),Kolkata)

M/s. Nicco Corporation Ltd.

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Kolkata-III

Respondent (s)

Appearance:

Adjournment request for the Appellant (s)
Shri S.Mukhopadhyay, Suptd.(A.R.) for the Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)

Date of Hearing/Decision:- 22.03.2018

ORDER NO.FO/76133/2018

Per Shri P.K.Choudhary

1. When the matter was called for hearing none appeared on behalf of the appellant. A letter dated 22.03.2018 has been filed with the Registry on 21.03.2018 by the liquidator of the company mentioning that the company is under the Liquidation Process and requested that the appeal may be decided on the basis of the papers already submitted at the time of filing of the appeal.

2. Heard Ld. D.R. for the Revenue.

3. The brief facts of the case are that the appellant has manufactured and supplied Guidance Wire classifiable under Chapter-85, during the period

February, 1999 to March, 1999, to the Ministry of Defence, Govt. of India, (Naval Science and Technological Lab, R&D Organisation, Vigyan Nagar, Visakhapatnam-530 027). Subsequently, the Ministry of Defence informed the appellant that the said "Guidance Wire" was exempted from duty under Notification No.10/1997 dated 01.03.1997, subject to the condition that the Ministry of Defence produced a certificate issued by an Officer not below the rank of Deputy Secretary to the Govt. of India. For the manufacture of Guidance Wire, two inputs namely Copper and Polypropylene are required. Therefore, the Range Superintendent of Central Excise Range-III, Kalyani advised the appellant to maintain separate registers.

The appellant vide letter dated 29.04.1999 informed the department that they had credited back the amount of Rs.7,59,720/- and had segregated the two inputs and had debited Rs.91,878/- which was the actual amount of MODVAT availed on the inputs used in the manufacture of the exempted final goods.

The department observed that the appellant had not maintained separate accounts as per Rule 57CC(9) of the Central Excise Rules, 1944 and accordingly, the department vide letter dated 10.08.1999 asked the appellant to deposit Rs.9,76,520/- being 8% of the goods supplied under full exemption to the Ministry of Defence. As the appellant had failed to maintain separate registers, they paid the amount on 10.08.1999. The adjudicating authority appropriated the deposited amount and imposed penalty of Rs.1,00,000/- under Rule 57I (4) and 173Q of the Central Excise Rules. The Commissioner (A) upheld the demand and interest but reduced the penalty to Rs.10,000/-. Aggrieved by the order of the Commissioner (Appeals), the appellant has filed the present appeal.

For better appreciation of facts, the relevant amendment of Central Excise Rules, 1944 by insertion of new rule 57CCC (2) is reproduced below:

> *"69(2). Where a person opts to pay the amount in accordance with the provisions of the Central Excise Rules, 1944 as amended by sub-section (1), he shall pay the amount along with interest specified thereunder and make an application to the Commissioner of Central Excise along with documentary evidence and a certificate from a Chartered Accountant or a Cost Accountant certifying the amount of input credit attributable to the inputs used in or in relation to the manufacture of the final products, which are exempted from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty, within a period of six months from the date on which the Finance Bill, 2010 receives the assent of the President."*

Further, the Fourth Schedule (see section 69 (I)) Sl.No.2 is also reproduced below:

2.	*Rule 57CCC of the Central Excise Rules, 1944 as inserted by section 69 of the Finance Act, 2010.*	*In the Central Excise Rules, 1944, for rule 57CCC, the following rule shall be substituted, namely:- "57CCC. Reversal of Actual Credit.- Where a dispute relating to adjustment of credit on inputs used in or in relation to exempted final products relating to the period beginning on the 1st day of March, 1997 and ending with the 31st day of March, 2000 (both days inclusive) is pending on the date on which the Finance Bill, 2010 receives the assent of the President, then, notwithstanding anything contained in sub-rules (1) and (2) of rule 57C and sub-rule (1) and sub-rule (9) of rule 57CC, a manufacturer availing credit of specified duty in respect of any inputs, other than inputs used as fuel, and manufacturing final products which are chargeable to duty and also other final products which are not so chargeable to duty, shall pay an amount equivalent to such credit*	*1st day of March, 1997 to 31st day of March, 2000 (both days inclusive).*

		attributable to inputs used in, or in relation to the manufacture of, such final products which are not chargeable to duty, before or after the clearance of such goods: Provided that the manufacturer shall pay an interest at the rate of twenty-four per cent per annum from the date of clearance of goods till the date of payment of the said amount".	

4. I find that the authorities below had all along construed that the appellant had violated the provisions of Rule 57CCC. This issue has not been examined. Therefore, in the interest of justice, it is necessary to examine whether the appellant, in fact, has violated the provisions of Rule 57CCC. Consequently, the appeal is remanded to the Adjudicating Authority to consider the grounds of appeal filed by the appellant and to consider the claim of the appellant and to pass order in accordance with law.

5. In the result, the appeal is allowed by way of remand.

(Operative Portion of the order already pronounced in the open court)

S/d.
(P.K.Choudhary)
MEMBER (JUDICIAL)

Ss