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

Excise Appeal No. 58/2008

(Arising out of the Order-in-Originall No.41/Commr./CE/KOL-V/ADJN./2007 Dated-12.10.2007 passed by the Commissioner of Central Excise, Kolkata-V)

M/s. Bata India Ltd.

...APPELLANT(S)

VERSUS

Commr. of Central Excise, Kolkata-V

...RESPONDENT(S)

APPEARANCE

Sri J.P. Khaitan, Sr. Advocate
& Sri Sanjoy Bhaumik, Advocate

FOR APPELLANT(S)

Sri A. Roy, Supdt. (A.R.)

FOR THE RESPONDENT(S)

CORAM:

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER
SHRI C.J. MATHEW, HON'BLE TECHNICAL MEMBER

DATE OF HEARING: 16/03/2018 **Date of Pronouncement:16/03/2018**

FINAL ORDER NO. : F/O 76205/2018

Per SHRI P.K. CHOUDHARY

The appellant is engaged in the manufacture of footwear classifiable under Chapter 64 of the First Schedule to the Central Excise Tariff Act,

1985. During the period from 1/6/2002 to 30/09/2004, the appellants have sent consumable inputs and intermediate products such as EVA Micro Cellular Sheets for job work. It is the case of the Revenue that the appellants have removed the inputs to their various job workers' premises. The inputs/inter-mediate products so sent for job work were not received back in full after necessary processing and the assessee cleared non returned materials as scrap on payment of Central Excise duty from the premises of the job worker. It is alleged that the Central Excise duty so paid was much less than the Cenvat Credit attributable to such quantity of inputs not received back within the factory and the assessee failed to obtain permission of the Jurisdictional Commissioner as required under Cenvat Credit Rules 4 (6). When clearances were effected from the job workers' premises. Show cause notices were issued. The Adjudicating authority confirmed the demand for Cenvat Credit of Rs.66,23,069/- for the period 01/10/2004 to 31/03/2005 and Rs.14,98,609/- for the period 1/4/2005 to 31/03/2006 alongwith interest and imposed penalty of equal amount.

2. The Ld. Sr. Advocate appearing on behalf of the appellant submits that the impugned order has been passed beyond the scope of the show cause notices and in gross violation of principles of natural justice. There was no allegation in the show cause notices and in fact there could not be any allegation that the appellant had cleared inputs as such from the premises of the job workers or that clearances from the premises of the job workers was in fact as such in the guise of scrap. The only case made out in the show cause notice was that the appellant had to obtain permission of the Commissioner for clearances of the wastes and scraps from the job worker's premises and in absence of such permission, the

appellant should have brought back the wastes and scraps to its factory and having not done so, was required to pay the proportionate demand on such inputs. The Ld. Sr. Advocate submitted a paper book containing Central Excise Rules and Cenvat Credit Rules as amended from time to time and also referred to various case laws.

3. Ld. A.R. for the Revenue reiterated the discussions and findings of the adjudicating authority.

4. Heard both sides and perused the appeal records. We find that the issue is no more res integra and the Commissioner (Appeals) in assessee's own case has set aside the duty demand and reduced the penalty. Subsequently, the penalty was set aside by the Tribunal as reported in [2009 (238) ELT 316 (Tri.-Kolkata].

5. In view of the above discussion, the impugned order is set aside and the appeal is allowed.

(Operative part of the order already Pronounced in the Court on 16/03/2018)

Sd/-	Sd/-
(C.J. MATHEW)	(P.K. CHOUDHARY)
TECHNICAL MEMBER	JUDICIAL MEMBER

k.b./-