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

Appeal No.E/71465/2013

(Arising out of Order-in-Original No.CCE/BBSR-II/No.10/Commissioner/2013 dated 24.09.2013 passed by the Commissioner (Appeal-I) of Central Excise, Customs & Service Tax, BBSR)

M/s. Seven Star Steel Pvt. Ltd.

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise & Service Tax, BBSR-II

Respondent (s)

<u>Appearance:</u>

Sri Kartik Kurmi, Advocate & Shri Rajesh Sharma, Advocate for the Appellant (s)
Shri S.Guha, AC(AR) for the Respondent (s)

CORAM:
Hon'ble SHRI P.K.CHOUDHARY, Member (Judicial)
Hon'ble SHRI C.J.Mathew, Member (Technical)

Date of Hearing/Decision:- 16.03.2018

ORDER NO.FO/76265/2018

Per Shri P.K.Choudhary

1. Briefly stated the facts of the case are that the appellant is engaged in the manufacture of sponge iron classifiable under chapter 72 of the first schedule to Central Excise Tariff Act (CETA), 1985. A show cause notice dated 28.05.2012 was issued alleging that they have wrongly availed cenvat credit amounting to Rs. 50,48,762/- during the period from April, 2009 to August, 2010 before making payment of the service tax amount by challans to the Govt. account. By the impugned order, the ld. Commissioner disallowed cenvat credit of Rs. 50,48,762/- along with interest and imposed penalty of equal amount of cenvat credit.

2. Heard both sides and perused the appeal records.

3. We find that the issue relates to premature availment of cenvat credit on GTA service. According to the Revenue, the appellant during the relevant period availed cenvat credit for two to six days before payment of service tax. In this context, the ld. Counsel for the appellant drew the attention of the bench to the table showing such availment of credit. The ld. Counsel submitted that the credit was never utilised by them on the last day of the month except during two months i.e. June, 2009 and May, 2010. It is contended that they have paid the interest for the availment of the premature credit. This fact was not disputed by the lower authorities. In any event, we find that there is no dispute as the appellant was eligible to avail the credit deposited by them. Therefore, the availment of cenvat credit cannot be disallowed. It is noticed that the appellant has already paid the interest for taking premature credit. In such situations, imposition of penalty under section 11AC of the Central Excise Act, 1944 is not justified. The entire transaction is reflected in the record.

4. In view of the above discussion, the impugned order is set aside. The appeal filed by the appellant is allowed.

(Operative portion of the order already pronounced in the Open Court)

S/d.
(P.K.Choudhary)
Member (Judicial)

S/d.
(C.J.Mathew)
Member (Technical)

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