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

Appeal No.E/75191/2016, CO-75346/2017

(Arising out of Order-in-Appeal No.21/BOL/2015 dated 17.11.2015 passed by the Commissioner of Central Excise, (Appeals-II), Kolkata)

Commissioner of Central Excise & Service Tax, Bolpur

Applicant (s)/Appellant (s)

Vs.

M/s Dhanbad Fuels Ltd.

Respondent (s)

Appearance:

Shri A.K.Biswas, Suptd.(AR) for the Appellant/Applicant (s)
Shri A.K.Das, Advocate for the Respondent (s)

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

Date of Hearing:- 25.04.2018

Date of Pronouncement : 23.07.2018

ORDER NO.FO/76465/2018

Per Shri P.K.Choudhary

The show cause notice dated 13.01.2015 was issued alleging wrong availament of the benefit of Notification No.12/2012-Cus dated 17.03.2012 as amended. It is the case of the Revenue that the respondent assessee while importing coal vide Bill of Entry No.418/HC/13-14 dated 26.12.2013 on paid CVD @2% adv instead of normal rate of 6% and accordingly claimed the refund of Rs.4,66,721/-. The adjudicating authority rejected the refund claim of Rs.4,66,721/- under Section 11B of the Central Excise Act, 1944. On appeal the Commissioner (Appeals) held that the assessee is eligible for the refund claim and accordingly set aside the adjudication order and allowed the appeal. Hence, Revenue has filed this appeal before the Tribunal. The respondent assessee has filed cross objection.

2. Heard both sides and perused the appeal records.

3. I find that the respondent assessee in this case had imported 3750 MT of South African Coal vide Bill of Entry No. 418/HC/13-14 dated 26.12.2013 on payment of CVD of Rs.4,18,963/- @2% adv in terms of Notification No.12/2012-Cus dated 17.03.2012 and availed cenvat credit under Rule 3(1)(vii) of Cenvat Credit Rules, 2004. It is the case of the respondent assessee that whatever is paid as CVD at the time of importation of goods/inputs may be taken as credit. On objection by the audit team of the department the assessee paid/reversed the amount of CVD taken as credit. Subsequently, they filed a refund claim. It is the case of the respondent assessee that the CVD had been charged not with reference to any corresponding Central Excise rate, but under the Customs Notification No.12/2012-Cus dated 17.03.2012 and the same is directly admissible as credit in terms of Rule 3(1)(vii) of Cenvat Credit Rules, 2004 without any reference to the Central Excise Tariff or any rate of duty under central excise. It is also the case of the assessee that there is no bar/restriction in availing of cenvat credit of that part of customs duty which has been paid as CVD. I find that in the present case imported coal is an input, however Condition No.25 of the Notification No.12/2012-Cus dated 17.03.2012 restricts non-availment of any credit of input and input services, if the final products made therefrom choose to pay duty @1% adv. vide Sl.No.67 or Sl No.128 of the Notification.

4. I find that though the amount involved in this matter is below the monetary limit of Rs.10.00 lacs in terms of Board's Instruction

F.No.390/Misc./163/2010-JC dated 17.08.2011, the present case falls under exclusion clause 3(c) of the National Litigation Policy introduced vide Board's Instruction dated 17.12.2015 which has been deleted vide Instruction F.No.390/Misc./116/2017-JC dated 04.04.2018.

Accordingly, the appeal is dismissed. Cross objection is also disposed of.

(Pronounced in the open court on 23.07.2018)

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

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