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

Ex.Appeal No.75352/18

Arising out of O/A No.157/RAN/2017 dated 31.10.2017 passed by Commr. of CGST & Central Excise (Appeals-I), Ranchi

M/s S.A.I.L.

...APPELLANT(S)

VERSUS

Commr. of CGST, C.Excise, Ranchi

RESPONDENT (S)

APPEARANCE

Shri S. P. Majumdar, Adv. for the Appellant (s)
Shri S. Mukhopadhyay, Supdt. (A.R.) for the Revenue

CORAM:

SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 09. 05. 2018

ORDER NO.FO/76542/2018

Per Shri P. K. Choudhary :

This is an appeal filed by the Appellant against the Order-in-Appeal No.157/RAN/2017 dated 31.10.2017 passed by Commr. of CGST & Central Excise (Appeals-I), Ranchi.

2. Briefly stated the facts of the case are that the appellant, M/s Steel Authority of India Ltd. (SAIL), Bokaro Steel Plant, is engaged in the manufacture of various articles of iron and steel classifiable under Chapters 72 and 73, among others, of the Central Excise Tariff Act, 1985. Show-cause notice dated 07.05.2014 was issued for the period 2009-2010 alleging that the assesses have not paid Central Excise duty on the clearance of used and rejected

machinery/machinery spare/equipment in contravention to the provisions of Rule 3 (5A) of the Cenvat Credit Rules, 2004. The Adjudicating Authority confirmed the demand of Rs.2,31,875/- along with interest and imposed equal amount of penalty under Section 11AC of the Central Excise Act, 1944. On appeal, the ld.Commissioner (Appeals) dismissed the appeal filed by the assessee. Hence, the present appeal before the Tribunal.

3. Heard both sides and perused the appeal records.

4. I find that Rule 3(5A) of Cenvat Credit Rules, 2004, prescribes that “if the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on the transaction value”. I also find from the record that the appellant all along stated that waste and scrap generated from the capital goods were brought into the factory much before 01.04.1994, when where was no provisions for availing credit on the capital goods. It is the case of the appellant that since there is no provision for availing credit on the capital goods, no Excise duty was required to be paid. I find that the Adjudicating Authority has also dropped the demand attributable to rejected machinery/machinery spares/equipments, which were procured before introduction of modvat scheme on capital goods. The Adjudicating Authority confirmed the demand only on those machinery items, where the appellant failed to produce any documentary evidence to the effect that no modvat credit was availed by them.

5. In view of the above discussions, I do not find any infirmity in the impugned order and the same is accordingly sustained. The appeal filed by the appellant is dismissed.

(Operative part of the order was pronounced in the open Court)

Sd/
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

mm