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

Appeal No.E/78353/2018

(Arising out of Order-in-Appeal No.132/Bol-CE/2018-19 dated 26.06.2018 passed by the Commissioner of Siliguri Appeals Commissionerate)

Modern India Concast Ltd. Applicant (s)/Appellant (s)

Vs.

Commissioner of CGST &CE, Siliguri Respondent (s)

Appearance:
Shri Arun Kumar Nandy, Consultant for the Appellant (s)
Shri A.K.Biswas, Suptd.(AR) the Respondent (s)

CORAM:

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

Date of Hearing/Decision:- 20.11.2018

ORDER NO.FO/76967/2018

Per Shri P.K.Choudhary

This appeal is listed for admission today. After hearing both sides and despite the amount involved in this case being less than Rs.2.00 lakhs, the appellant intends to contest the issue on merit, which is admitted and since the issue lies in a narrow compass, with the consent of both sides the same is taken up for disposal.

2. The appellant is engaged in the manufacture of Ferro Silico Manganese classifiable under Chapter 72 of the Central Excise Tariff Act, 1985. During the period from April, 2011 to March, 2012, the appellant availed cenvat credit on carriage outward service in respect of transporting of their finished goods for delivery at buyers premises. Since the service tax on the transportation charges were paid by the appellant under the Reverse Charge Mechanism in terms of Section 68(2) of the Finance Act, 1994, they availed

cenvat credit to that extent. Show cause notice was issued on 16.08.2012 for disallowance and recovery of credit on input service tax so availed by the appellant along with interest and for imposition of penalty. The adjudicating authority confirmed the demand of duty amounting to Rs.2,28,032/- alongwith interest and imposed penalty of equal amount under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. On appeal, the ld. Commissioner (Appeals) upheld the adjudication order to the extent of demand of duty and interest. He reduced the imposition of penalty to 50% of the duty amount confirmed i.e. 1,14,016 (50% of Rs.2,28,032/-). Hence, the present appeal before this Tribunal.

3. Ld. Consultant appearing on behalf of the appellant submits that the adjudication order has been passed without scrutinizing the transport documents of the appellant. He strongly argued that the adjudicating authority ought to have worked out the appellant's liability on this account by taking into consideration all the transport documents in respect of outward transportation for delivery of finished products up to the customers premises. He further contended that the calculation sheet admitting their liability as a bonafide tax payer, was submitted before the adjudicating authority wherein they have admitted liability of Rs.1,55,768/- as against the adjudged liability of Rs.2,28,032/- calculated by the department. Ld. Consultant further submits that they have also deposited the entire demand of their admitted liability i.e. Rs.1,55,768/- by reversing their cenvat account vide entry Sl.No.1/4 dated 30.05.2013 and deposited the liability of interest of Rs.40,217/- and 50% of the penalty of Rs.77,885/- vide GAR-7 Challan No.00166 dt. 30.05.2013. Ld. Consultant cited various decisions where it was held that penalty is not imposable when dispute related to interpretation of statutory provisions.

4. Ld. DR reiterates the order of the lower authorities.

5. Heard both sides and perused the appeal record.

6. I find that the appellant is not disputing the demand of duty and interest and have also paid 50% of the penalty of the admitted demand. However, they are claiming that there is some discrepancy in the demand confirmed to the tune of Rs.2,28,032/-, whereas as per their calculation, the total demand should have been Rs.1,55,768/-. I find that the issue is covered by the judgment of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Belgaum vs. Vasavadatta Cements Ltd. [2018(11) GSTL 3 (SC)]. In the aforesaid judgment the Hon'ble Supreme Court has held that w.e.f 01.04.2008, the cenvat credit is available only upto the place of removal. In view of the aforesaid decision, the demand of duty alongwith interest is upheld and since the dispute relates to interpretation of statutory provisions and there were diverse decisions of various High Courts and the matter has recently been stayed at rest by the Hon'ble Supreme Court, the imposition of penalty in the present case is not warranted. Accordingly, the penalty imposed under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 is set aside.

7. Regarding the dispute of quantum of demand, the matter is remanded to the adjudicating authority to verify the documents of the assessee in respect of their claim and to pass an order in accordance with law.

8. In view of the above discussions, the appeal is thus partly allowed.

(Dictated and pronounced in the open court)

S/d.

(P.K.Choudhary)

ss

MEMBER (JUDICIAL)