

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

Ex.Appeal No.75954/18

Arising out of O/A No.399/HWH/CE/2017-18 dt.11.12.2017 passed by CGST & Central Excise (Appeals), Kolkata

CGST & Excise, Howrah

...APPELLANT(S)

VERSUS

M/s Deem Roll Tech Ltd.

RESPONDENT (S)

APPEARANCE

Shri S. S. Chattopadhyay, Supdt. (A.R.) for the Revenue
None for the Respondent (s)

CORAM:

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

DATE OF HEARING/DATE OF DECISION : 01. 01. 2019

ORDER NO...FO/A/75011/2019

Per Shri P. K. Choudhary :

The present appeal is filed by Revenue against Order-in-Appeal No.399/HWH/CE/2017-18 dt.11.12.2017.

2. When the matter was called, none appeared on behalf of the Respondent-Assessee despite notice. Since the issue involved in the instant appeal, lies in a narrow compass, the same is being taken up for disposal.

3. Facts of the case in brief are that the respondent is engaged in the manufacture of steel roll for Rolling Mill and other cast articles of iron classifiable under Chapter 84 and 73 of the First Schedule to the Central Excise Tariff Act, 1985. Show-cause notice was issued alleging default in payment of Central Excise duty. It is the case of the

Revenue that the Respondent-Assessee was required to pay Central Excise duty from their PLA on consignment basis without utilizing the cenvat credit at the time of clearance of excisable goods, but he assessee has failed to pay the duty within due date. The adjudicating authority has confirmed the demand of Rs.12,95,656/- along with interest and imposed penalty of Rs.5,000/- under Rule 27 of Central Excise Rules, 2002. No penalty was imposed under Rule 25 ibid. Revenue was in appeal before the lower appellate authority and the Id.Commissioner (Appeals) rejected the appeal. Hence the present appeal before the Tribunal.

4. After hearing the Ld. DR for the Revenue and on perusal of the appeal records, it is seen that the provisions of Rule 8 (3A) of the Central Excise Rules, 2002, based on which the demand for duty has been raised by the Department has been struck down by the various High Courts as ultra vires. In this connection, he referred to some of the decisions, (i) 2014 (310) Excise Law Time 833 (Gujarat) (Indsur global Ltd. V. Union of India), (ii) 2015 (326) Excise Law Time 256 (Punjab & Haryana), (iii) (Sandley Industries v. union of India), 2015 (323) Excise Law Time 489, (iv) (Mad)-2015-VIL-208-MAD-CE (Malladi Drugs & Pharmaceuticals Ltd. v. union of India), (v) 2015 (316) Excise Law Time, 595 (Gujarat), (vi) Precision Fasteners Ltd. V. CCE and (vii) 2016 (314) and 2016 (341) Excise Law Time 603 (Allahabad)- A.T.V. Projects India ltd. v. Union of India, (viii) Goyal MG Gases Pvt. Ltd. vs. Union of India-2017-VIL-655-CAL-CE.

5. In view of the above decisions including the decision of the Jurisdictional High Court, there is no bar in making use of the accumulated Cenvat Credit for making payment of Central Excise Duty even during default period.

6. By following the decision of the Jurisdictional High Court, I come to the conclusion that there is no bar in making use of the accumulated Cenvat Credit in making payment of Central Excise Duty even during default period.

7. In view of the above, there is no justification for ordering payment of interest or penalty as sought by the Revenue. In the result, the appeal filed by the Revenue is rejected.

(Dictated and pronounced in the open court)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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