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

Appeal No. E/221/2010

(Arising out of Order-in-Original No. 17/MP/Commr./2009 dated 18.12.2009 passed by the Commissioner, Central Excise & Service Tax, Ranchi.)

CCE & ST-Ranchi

Appellant (s)

Vs.

M/s. Maithan Ceramics Ltd. Respondent (s)

Appearance:
Shri A. K. Biswas, Suptd. (A. R.) for the Revenue
Shri S. Bhowmik, Advocate for the Respondent (s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)
Date of Hearing: -18.07.2018
Order No. FO/77246/2018

PER SHRI P. K. CHOUDHARY

The present appeal has been filed by the department against the Order-in-Original No. 17/MP/Commr./2009 dated 18.12.2009.

2. The facts of the case in brief are that the respondents are engaged in the manufacture of Refractory Bricks, Refractory Basic Bricks etc. classifiable under Chapter 69 of the First Schedule to the Central Excise Tariff Act, 1985. During the period from January 2004 to March 2008, they received used and rejected refractory bricks broken to grogs from different suppliers and used the same in the manufacture of various range of Refractory products (i.e. final product). They also availed CENVAT Credit on such waste and rejected materials. A Show-Cause Notice dated 23/01/2009 was issued proposing to deny the CENVAT Credit along with interest and to impose penalty. Adjudicating Authority dropped the proceedings. Revenue filed appeal before the Commissioner (appeals). By

the impugned order, the Commr. (Appeals) rejected the appeal filed by the Revenue. Hence, Revenue filed this appeal.

3. Heard both sides and perused the appeal records.

4. The main contention of the Ld. A. R. appearing on behalf of the Revenue, is that there is no mention of waste and scrap of refractory material in the Schedule to the Central Excise Tariff Act, 1985 and therefore, the respondent is not entitled to avail CENVAT Credit.

5. We find that the respondent availed CENVAT Credit on the basis of the duty paying documents. The Ld. A.R. placed the Single member decision of the Tribunal, that the waste and scrap of Fire Bricks are non-excisable goods. In our considered view, the Jurisdictional officers of the recipient of the CENVAT Credit, has no authority for classification of the goods. In the present case, there is no dispute that the respondent claimed CENVAT Credit on the basis of the cenvatable invoice, hence there is no scope to deny the CENVAT Credit. Accordingly, we do not find any reason to interfere with the order of the commissioner (Appeals). The appeal filed by the Revenue is dismissed.

Sd/-
(Bijay Kumar)
Member (Technical)

Sd/-
(P.K. Choudhary)
Member (Judicial)

Pooja