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

Ex. Appeal No.78914 of 2018

Arising out of Order-in-Appeal No.235/RAN/2018 dated 14.05.2018 passed by Commr. of CGST & Central Excise (Appeals), Ranchi

M/s Multitech Auto Pvt. Ltd.
A-5,Near Industrial Estate,
Saraikela, Kharsawan,
Jharkhand-832109.

APPELLANT

VERSUS

CGST & Excise, Ranchi
Adityapur-4 Range,
Central Excise Building, 2nd Floor,
Outer Circle Road,
Bistupur,
Jamshedpur

RESPONDENT

APPEARANCE

Shri R. S. Bajaj, C.A. for the Appellant
Shri D. Halder, Authorized Representative for the Respondent

CORAM:

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

DATE OF HEARING/DATE OF DECISION : 04. 06. 2019

FINAL ORDER NO.75777/2019

Per Shri P. K. Choudhary :

Briefly stated the facts of the case are that the appellant is a Private Limited Company and is engaged in the manufacture of parts and accessories of motor vehicle including engine parts, transmission shafts and leaves, screws, bolts, nuts, screw hooks, washers etc.. In terms of Rule 9A (3) of the Cenvat Credit Rules, 2002/2004, every assessee was required to file Monthly Return of information for the receipt and consumption of the principal inputs with reference to the quantity of final products manufactured in ER-6 Form (specified by Notification No.41/2004-CE(NT) dated 25.11.2004) within 10th of the following month. However, Notification No.39/2004-CE (NT) dated 25.11.2004 extended the exemption from filing such Return to the assessee whose payment of excise duty through account current during preceding financial year was less than Rs.1.00 Crore. That the expression "through account current" was omitted by Notification No.41/2008-CE (NT) dated 29.09.2008 and this escaped the attention of the appellant assessee. This resulted in failure to file ER-6 Returns till March, 2016. Show-cause notice dated 12.08.2016 was issued for non-submission of ER-6 Monthly Return for the period 2012-2013, 2013-2014 and 2014-2015. The Adjudicating Authority imposed a penalty of Rs.5,000/- per Return for non-filing of each such Return i.e. the total amount of Rs. 1,80,000/- (Rs.5000/- X 36 ER-6 Returns) as penalty was imposed under Rule 15A of Cenvat Credit Rules, 2004. On appeal, the Commissioner (Appeals) accepted the contention of bonafide belief and reduced the penalty imposed by 50% holding the default as un-intentional and not involving any revenue loss. The assessee is now in appeal before the Tribunal.

2. The ld.Counsel appearing on behalf of the Appellant Company, submits that the appellants have been maintaining various accounting and statutory records, viz., Raw Material Register in Form –IV and Daily Stock Account on day to day basis. He also submitted that since ER-6 Return merely contains information for the receipt and consumption of the principal inputs with reference of the quantity of

final products manufactured, its filing is merely a procedural compliance. No revenue implication is involved. He, therefore, prays for imposing a token penalty to meet the ends of justice.

3. The ld.D.R. for the Revenue, justified the impugned order.

4. Heard both sides and perused the appeal records.

5. I observe that the proceedings were initiated for failure to file ER-6 monthly return for the period 2012-13, 2013-14 & 2014-15. The appellants were required to submit, within ten days from the close of each month, a monthly return in the Form specified by a Notification in respect of the information regarding the receipt and consumption of each principal inputs with reference to the quantity of final products manufactured by them to the Range Superintendent. This requirement was notified by Notification No.41/2004-CE (NT) dated 25.11.2004. Simultaneously, Notification No.39/04-CE (NT) dated 25.11.2004 was also issued, which extended the exemption from filing such return to the assessee, whose payment of excise duty through account current during preceding financial year, was less than Rs.1.00 Crore. Subsequently, the expression “through account current” was omitted by Notification No.41/2008-CE (NT) dated 29.09.2008. This Notification escaped the attention of the assessee, which resulted in failure to file ER-6 return upto March, 2016. The appellants have accepted the default, but have pleaded that the same was un-intentional and there has not been any loss of revenue to the exchequer and accordingly, prayed for setting aside the penalties imposed.

6. I also find from the record that the appellants have reflected the details of the cenvat credit taken and utilized noticing monthly return (ER-1) filed on month to month basis within specified due date and have also filed ER-5 returns i.e information relating the principal inputs. It is their submission that they were under bonafide belief that there is an exemption from filing ER-6 return under the Notification No.39/2004-CE (NT) (supra) as long the duty paid through PLA does not exceed the ceiling of Rs.1.00 Crore.

7. On perusal of record, I also observe that a lenient view can be taken and quantum of penalty can be reduced to meet the ends of justice and accordingly, I modify the quantum of penalty to Rs.500/- per return for non-filing of each such return. The total amount of penalty would be Rs.500/- X 36 ER-6 Returns under Rule 15A of Cenvat Credit Rules, 2004.

8. In view of the above discussions, the Appeal filed by the appellant is partly allowed in the above terms.

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

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

mm