

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal No.75095 of 2022

(Arising out of Order-in-Appeal No.337/HWH/CE/2018-19 dated 27.09.2018 passed by Commissioner (Appeals) of Central Excise, Kolkata)

M/s Hariom Foundry Enterprise

82/1, 'O' Road, Belgachia, Howrah-711108

Appellant

VERSUS

Commissioner of CGST & Excise, Howrah

15/1, Strand Road, Kolkata 700001

Respondent

Appearance:

None for the Appellant

Shri S.S.Chattopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75111/2022

DATE OF E-HEARING : 23.02.2022

DATE OF DECISION : 23.02.2022

PER P.K.CHOUDHARY :

The appeal was filed on 3rd January, 2019 against the Order-in-Appeal No.337/HWH/CE/2018-19 dated 27.09.2018. Defect Memo was issued by the Registry on 21st January, 2019 asking the appellants to submit proof of pre-deposit. In this regard, the appellants filed a reply on 20th February, 2019 mentioning that the appeal filed by the Department in the instant case before the Ld.Commissioner (Appeals) was for incorrect mentioning Clause (a) of Section 11AC (1) of the Central Excise Act, 1944 for imposition of penalty under Rule 15 (2) of the Cenvat Credit Rules, 2004.

2. The Ld.Commissioner (Appeals) modified the Order-in-Original observing that the Adjudicating Authority was not right in quoting Clauses (a) & (e) of Section 11AC (1) instead of Clauses (c) & (e).

3. However, on perusal of the appeal records, I find that there is one more Order-in-Appeal No.156/HWH/XAP-83/2017-18 dated 21.05.2018,

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whereby the Ld.Commissioner (Appeals) has set aside the entire Order-in-Original No.DC-14/HWH-II/17-18 dated 31.05.2017.

4. In view of the facts as stated above and the circumstances of the cases, since the entire Order-in-Original was already set aside by the Ld.Commissioner (Appeals) of CGST & Excise vide his Order dated 21.05.2018, the subsequent order of Ld.Commissioner (Appeals) dated 27.09.2018 and the appeal filed by the appellants before the Tribunal on 3rd January, 2019, are rendered infructuous.

5. The appeal filed by the appellant is dismissed as infructuous.

Dictated and pronounced in the open Court.

Sd/

(P.K.Choudhary)
Member (Judicial)

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