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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.85 of 2010
And
Excise Cross Objection No.112 of 2010

(Arising out of Order-in-Original No.102/Commr./BOL/09 dated 16.10.2009 passed by Commissioner of Central Excise, Bolpur.)

Commissioner of Central Excise, Bolpur
(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)
...Appellant

VERSUS

M/s. Ultra Tech Cement Limited (West Bengal Cement Works)
.....Respondent
(Near EPIP Plot, Muchipara, P.O. Rajbandh, Durgapur-713212.)

APPEARANCE

Shri P.K.Ghosh, Authorized Representative for the Revenue
Shri Dipankar Majumdar, Advocate for the Respondent

CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75238/2023

DATE OF HEARING : 18 April 2023
DATE OF DECISION : 18 April 2023

Per : P.K. CHOUDHARY :

Against the impugned No.102/Commr./BOL/09 dated 16.10.2009 the assessee had also filed an Appeal being Excise Appeal No.70 of 2010 and the Department filed the present Appeal being Excise Appeal No.85 of 2010 on the ground that the penalty under Sub-Rule 1 of Rule 15 of CENAT Credit Rules, 2004 may be imposed.

2. We find that the assessee's appeal was heard and allowed vide Final Order No.75181/2023 dated 29.03.2023. The assesse had also filed a Cross Objection against the Department's Appeal being Excise Cross Objection No.112 of 2010.

3. Ld.Authorized Representative for the Appellant Revenue reiterated the grounds of Appeal.

4. The Ld.Advocate, appearing on behalf of the Respondent submits that when the demand itself is not sustainable, the question of imposing penalty does not arise. He further submits that the impugned order has erroneously invoked the extended period of limitation under Section 11A(1) of the Act on the ground of willful suppression and imposed penalty under Rule 15(2) of the CENVAT Credit Rules, 2004.

5. We find that a detailed order has been passed by this Bench of the Tribunal in the case of assessee's appeal being Excise Appeal NO.70 of 2010 vide Final Order No.75181/2023 dated 29.03.2023 and the Order-in-Original was set aside. Since the entire Order-in-Original was set aside there is no question of any further penalty to be imposed under Section 15(2) of the CENVAT Credit Rules, 2002.

In view of the above discussion, the Appeal filed by the Department, being devoid of any merits, is dismissed. Cross Objection filed by the Respondent also gets disposed of.

(Dictated and pronounced in the open Court.)

Sd/
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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