

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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.75731 of 2019

(Arising out of Order-in-Original No.562/HWH/CE/2018-19 dated 14.12.2018 passed by Commissioner of CGST & Central Excise (Appeals-II), Kolkata.)

M/s. Shree Brindaban Ispat (P) Ltd.
(17/6, Belur Road, Liluah, Howrah-711204.)

...Appellant

VERSUS

Commissioner of CGST & CX, Howrah Commissionerate
.....Respondent
(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

APPEARANCE

Shri Ankit Kanodia, Advocate for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Revenue

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

FINAL ORDER NO. 75818/2023

DATE OF HEARING : 21 June 2023
DATE OF DECISION : 21 June 2023

Per : P.K. CHOUDHARY :

The present appeal has been filed by the Appellant, M/s Shree Brindaban Ispat Udyog (P) Ltd challenging the imposition of penalty under Rule 26(2) of the Central Excise Rules, 2002 vide Order in appeal dated 14-12-2018.

2. The brief facts of the case are that the appellant was engaged in clearing Hot Rolled Rectangular Steel Bars, Collector Bars and Anode Pins" falling under CETH 84879000 to Tata International Ltd.(TIL) by following the procedure laid down under Rule 4(5)(a) of the Cenvat Credit Rules, 2004. It was receiving duty paid inputs consigned to the Appellant and invoiced to TIL from suppliers of inputs on which the Appellant was availing Cenvat credit and the appellant was also paying

duty on removal of the goods to TIL. The department alleged that during the period March 2014 to December 2014, the excise duty on such goods being removed by the appellant was reduced to 10.3% vide Notification No. 4/2012-CE dated 17.02.2014 and 06/2014-CE dated 25.06.2014. however, the appellant had paid excise duty at the higher rate of 12.36% in the impugned period also, thereby leading to passing of ineligible credit to TIL which encashed the said amount on account of export of goods and claiming rebate of duty paid by the appellant. The show cause notice dated 25.10.2017 was issued to impose penalty on the appellant for passing ineligible benefit to TIL, which was confirmed by both the lower authorities. Hence the present appeal.

3. Heard both sides and perused the appeal records.

4. We find that the only issue to be decided in the present case is whether the appellant could be saddled with penalty under Rule 26(2) of the CER, 2002 in a case when it has paid duty of equivalent amount to the government and also filed its ER 1 return timely disclosing all transactions.

Rule 26(2) of the CER, 2002 provides as below:

(2) Any person, who issues—

(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or

(ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made there under like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater.]

5. We find that the said rules would be applicable in case wherein ineligible Cenvat credit has been passed to recipients in cases without supply of goods and such related transactions. The present case is a case wherein there is no allegation by the department that the appellant has issued invoices without supply of goods. Infact all the transactions have been recorded in ER 1 returns and disclosed by the appellant to the department. Hence, we are unable to pursade ourselves as to how the penalty under Rule 26(2) of the CER, 2002 can be imposed in such bonafide cases.

6. Further, neither the SCN nor the OIO has brought out any evidence of connivance between the appellant and TIL in the above transactions.

7. Thus for the above reasons we set aside the entire demand of penalty along with consequential relief, if any to the appellant.

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

Sd/

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)