

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

REGIONAL BENCH – COURT NO.1

**Excise Miscellaneous Application No. 77227 of 2019 (COD)  
And  
Excise Appeal No. 76572 of 2019**

(Arising out of Order-in-Appeal No. 309/HAL/CE 2018-19 dated: 08.03.2019 passed by the Commissioner of CGST & Central Excise, Appeals-II Commissionerate, Kolkata)

**M/s Manaksia Limited**

(Vill & Post: Bhuyanraichak, Sutahata, Haldia,  
Purba Medinipur, Pin-721635)

**...Appellant**

*VERSUS*

**Commissioner of CGST & CX, Haldia Commissionerate**

(Asst. Commissioner of CGST & CX, Haldia-I Division, Tripathy Complex,  
City Centre, Debhog, Haldia, Purba Medinipur)

**...Respondent**

**APPEARANCE :**

Shri S.P. Siddhanta, Consultant, for the Appellant

Shri P.K. Ghosh, Authorized Representative for the Respondent

**CORAM:**

**HON,BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 75860/2023**

Date of Hearing : 21.06.2023

Date of Decision : 21.06.2023

**PER ASHOK JINDAL**

The appellant by way of this appeal is challenging the imposition of penalty under Rule 15(2) of Cenvat Credit Rule, 2004 read with Section 11AC of Central Excise Act, 1974.

2. The facts of the case are that appellant is manufacturer of Aluminum products and in the process of manufacturing, they use coal. As coal is of different sizes and required to be broken to use in the manufacturer, some fines generated which was cleared by the appellant without payment of duty, therefore, during the course of audit it was pointed out to the appellant that they are required to reverse the Cenvat Credit on fines which has been generated during the course of manufacturing of their final products, instead of reversing Cenvat Credit, the appellant paid duty on these fines alongwith

**Excise Appeal No. 76572 of 2019**

interests. Thereafter, the Show-cause-Notice was issued to the appellant for reversal of Cenvat Credit attributable to the fine and to impose penalty thereof. The matter was adjudicated the duty paid was not adjusted but a demand has been raised on account of wrong availment of Cenvat Credit by the appellant alongwith interest and penalty was also imposed. The appellant is aggrieved from the said order and challenged before the Ld. Commissioner (Appeals). The Ld. Commissioner (Appeals) as demanded an amount @6% of the fines cleared by the appellant and imposed the penalty on the appellant. Against the said order, the appellant is before me.

3. The Ld. Consultant (Appeal) on behalf of the appellant submits that the Ld. Commissioner (Appeals) has gone beyond the scope of show-cause-notice as there was no proposal in the show-cause-notice to demand an amount @6% of the value of fines cleared by them. Therefore, the impugned order is beyond the scope of show-cause-notice. Further, he stated that penalty of the appellant is not imposable in the facts and circumstances of the case.

4. On the other hand, Ld. AR reiterated the findings of the impugned order.

5. Heard both sides.

6. I have been gone through the records placed before me and find that in the show cause notice allegation against the appellant is that they are not entitled to avail Cenvat credit on inputs which are attributable to fines which have been cleared by the appellant without payment of duty. Therefore, the Ld. Commissioner (Appeal) gone beyond the scope of Show-Cause-Notice holding that the appellant is liable to pay @6% of the value of fines cleared by them. In that circumstances, the impugned order is set aside and the appeal is allowed

(Dictated and Pronounced in the open Court)

Sd/-

**(Ashok Jindal)**  
**Member (Judicial)**

Pinaki