IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. II

Appeal No. E/1323/09

(Arising out of Order-in-Appeal No. SB/79/Th-I/09 dated 01.09.2009 passed by the Commissioner of Central Excise (Appeals), Mumbai-I).

M/s Bhuwalka Steel Industries Ltd.	Appellant

Vs.

Commissioner of Central Excise, Mumbai-I	Respondent

Appearance:

Shri M.P. Kasale, Advocate	for Appellant
Shri M.R. Melvin, Supdt. (AR)	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 15.03.2018

Date of Decision: 22.03.2018

ORDER NO. **A/85811/2018**

Per: Ramesh Nair

The issue involved in the present case is that during the period 11.10.2003 to 25.10.2003 in respect of clearance of input as such, whether the duty is payable equivalent to the CENVAT Credit availed on such inputs or in terms of Section 4 and the rules made thereunder for clearance of the goods to their own unit.

2. Shri M.P. Kasale, learned Counsel appearing on behalf of the appellant submits that during the relevant period as per Rule 3(4) of the CENVAT Credit Rules, the amount of duty payable is only equivalent to the CENVAT Credit availed on inputs, therefore, the duty was not required to be paid in terms of Rule 8 of the Central Excise Valuation (Determination of price of excisable goods) Rules, 2000 as alleged by the Revenue. There is no dispute that the appellant have discharged the excise duty equivalent to CENVAT Credit amount.

3. Shri M.R. Melvin, learned Supdt. (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both sides. The issue is that what is the duty payable on the clearance of inputs as such to their own unit of the appellant. In this regard, the relevant Rule 3(4) prevailing at the relevant time reads as under: -

> "3(4) *When inputs or capital goods, on which CENVAT Credit has been taken, are removed as such from the factory, the manufacturer of the final product shall pay amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to under Rule 7."*

In view of the above rule, the appellant was required to pay the duty on removal of inputs as such, only equal to the amount of CENVAT Credit availed on such inputs. There is no dispute that the appellant have paid the excise duty on the removal of input as such to their own unit equal to the CENVAT Credit availed on such inputs. Therefore, we do not agree with the Revenue's contention that the duty is required to be paid in terms of Rule 8 of the Central

Excise Valuation (Determination of price of excisable goods) Rules, 2000 issued under Section 4(1)(b) of Central Excise Act, 1944.

5. Therefore, the impugned order is set aside and the appeal is allowed.

(Pronounced in Court on 22.03.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Sinha