IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/85942/2013

[Arising out of Order-in-Appeal No: SB (121) ThI/2011 dated 21st March 2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Rishabh Dying & Printing Mills …***Appellant***

versus

Commissioner of Central Excise
Thane – I ***…Respondent***

Appearance:

Shri RD Wagle, Advocate for appellant

Shri NN Prabhudesai, Superintendent (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 12/06/2017
Date of decision: 12/06/2017

ORDER NO: A/ 92302 / 2017

Appellant, M/s Rishabh Dying & Printing Mills, is in appeal against order-in-appeal no. SB (121) ThI/2011 dated 21st March 2011 of Commissioner of Central Excise (Appeals), Mumbai Zone – I which has upheld the order of the original authority denying claim for abatement under the Annual Capacity Determination Rules, 1998 and 2000 owing to closure of the factory for repairs on two occasions between 5th March 2000 and 8th April 2000.

2. The matter is on its second journey to the Tribunal; on the previous occasion, the matter having been remanded to the first appellate authority, who allowed the appeal and in consequence of which the competent authority sanctioned ₹ 2,66,667 but withheld ₹48,000 recoverable in another proceeding for credit of the balance in the account current. This appeal disputes the credit to account current.

3. Heard Learned Counsel for appellant and Learned Authorized Representative.

4. It is not in dispute that ₹48,000 was recoverable from the appellant and appropriation from other dues owed to the appellant cannot be faulted on legality. The decision cited by the Learned Counsel pertains to balance lying in the CENVAT credit account at the time of closure of the unit which is not consistent with the present circumstances claimed by the appellant. The abatement that was released has been credited to the account current which is the cash deposit of the appellant maintained with the government. The appellant is entitled to claim the amount lying in the account current at the time of closure of the unit. The credit of the updated amount, net of recoverable, in the account current is not to the detriment of the

appellant. Appellant, therefore, does not have justifiable cause to claim relief.

5. Accordingly, the appeal is disposed off as infructuous.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

**/as*