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

Appeal No. E/87637/2017

(Arising out of Order-in-Appeal No. GOA-EXCUS-000-APP-046-2017-18 dated 11.07.2017 passed by Commissioner of Customs & Central Excise (Appeals), Goa)

Global Ispat Ltd. **Appellant**
Vs.

Commissioner of Cus & CE Goa **Respondent**

Appearance:

Shri C.S. Biradar, Advocate for appellant
Shri H.M. Dixit, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision: 17.05.2018

FINAL ORDER NO...A/86923/2018

Per: S.K. Mohanty

This appeal is directed against the impugned order dated 11.07.2016 passed by the Commissioner (Appeals), Central GST and Customs, Goa.

2. Brief facts of the case are that the appellant is engaged in the manufacture of MS Ingots, Runner & Riser falling under Chapter Head 72 of the Central Excise Tariff Act, 1985. During the disputed period, the appellant had imported steel scraps and

filed Bill of Entry before the Customs authorities at the port of import. The Bill of Entry generated in the EDI system captured the Education Cess and Secondary & Higher Secondary Edu. Cess for the purpose of assessment. The appellant had paid such amount and availed CENVAT credit in terms of Rule 3 of Cenvat Credit Rules, 2004. Taking of CENVAT credit was disputed by the department on the ground that w.e.f. 01.04.2012 there was no levy on account of such cess. Immediately thereafter, the appellant had reversed the CENVAT credit in its books of accounts and also paid interest for the delayed reversal of Cenvat amount. The matter was adjudicated against the appellant, wherein CENVAT credit along with interest was confirmed and the amount already deposited by the appellant was appropriated against such heads of accounts. The adjudication order also imposed penalty under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. On appeal, the learned Commissioner (Appeals) vide impugned order has upheld the adjudged demand confirmed on the appellant. Hence the appellant has filed the present appeal before the Tribunal.

3. Learned Advocate appearing for the appellant submits that the appellant is not contesting the CENVAT credit as well as the interest demand confirmed in the adjudication order. However, he contended that the appellant cannot be exposed to

penal consequences provided under sub-rule (2) of Rule 15 of the Cenvat Credit Rules, 2004 read with section 11AC of the Central Excise Act, 1944 inasmuch as availment of Cenvat credit was not owing to the reason of fraud, collusion, suppression etc., with intent to defraud the Government revenue.

4. On the other hand, learned D.R. appearing for Revenue reiterates the finding recorded in the impugned order and further submits that since on pointing out the mistake regarding wrong availment of CENVAT credit by the audit party, the appellant had reversed the Cenvat amount, it is liable to pay penalty and accordingly, imposition of penalty by the authorities below is in conformity with the statutory provisions.

5. Heard both sides and perused the records.

6. It is an admitted fact on record that the EDI system was not updated at the time of filing the bill of entry by the appellant. Appellant had also paid such amount into the Central Government account. Thus, under such circumstances, it cannot be said that taking of CENVAT credit of the duty amount paid into the Government exchequer would call for invocation of penal provisions contained in the CENVAT structure. Further, the department has not brought on any iota of evidence to prove the malafide intention of the appellant in availment of such

irregular Cenvat credit. Therefore, I am of the considered view that the penalty imposed on the appellant cannot be sustained in the eyes of law.

7. In view of the above, the impugned order, to the extent it imposed penalty on the appellant under Rule 15(2) *ibid* read with Section 11AC *ibid* is set aside and the appeal is allowed in favour of the appellant to such extent.

8. In the result, the appeal is partly allowed in favour of the appellant.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk