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

APPEAL No.E/901/2010

(Arising out of Order-in-Original No.05/COMMR./M-II/2010 dated 08/04/2010 passed by the Commissioner of Central Excise, Mumbai-II)

Mahanagar Gas Ltd., : **Appellant**

VS

Commissioner of Central Excise Mumbai-II : **Respondent**

Appearance

Ms.Padmavati Patil, Advocate for Appellant
Shri. A.B. Kulgod, Asst. Comm. (A.R) for respondent

CORAM:

**Hon'ble Shri S K Mohanty, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)**

**Date of hearing : 21/08/2018
Date of decision : 21/08/2018**

ORDER NO. A/87326 / 2018

Per : Shri S K Mohanty

1. Imposition of penalty under Rule 15 (2) of Cenvat Credit Rules, 2004, read with Section 11AC of the Central Excise Act, 1944, is the subject matter of present dispute.

2. Brief facts of the case are that the appellant is engaged in the manufacture of "Compressed Natural Gas (CNG), falling under Chapter

sub-heading No.2711.21 of the Central Excise Tariff Act, 1985. The appellant avails Cenvat Credit of Central Excise duty paid on the inputs and capital goods. During the disputed period, the appellant had availed Cenvat Credit on capital goods, viz., cascades, dispensers, spares, etc. Availment of such credit was disputed by the department on the ground that at the time of taking such credit, the godowns where such goods received, were not registered with the Central Excise department. On pointing out such discrepancy by the audit wing of the department, the appellant had reversed the Cenvat Credit and also paid interest on such delayed reversal of the credit amount. Thereafter, the department initiated show-cause notice proceedings against the appellant, seeking for denial of Cenvat Credit, payment of interest and for imposition of penalty. The matter was adjudicated vide impugned order dated 08/04/2010, wherein Cenvat demand of Rs.1,47,14,325/- was confirmed against the appellant along with interest. The amount of credit along with interest already paid by the appellant was appropriated in the said order. Besides, the impugned order also imposed equal amount of penalty under Rule 15 (2) of the Rules read with Section 11AC of the Act.

3. Learned Advocate appearing for the appellant submits that taking of Cenvat Credit in respect of the disputed capital goods is in conformity with the Cenvat statute inasmuch as there is no specific stipulation or embargo in this statute that credit should be availed after obtaining the registration certificate from the department. However, she contended that since the department raised the objection during the course of audit, the appellant *suo moto* reversed

the Cenvat Credit availed by it and also paid interest much before the date of issuance of the show-cause notice. She also contended that the ingredients mentioned in Rule 15 (2) of the Rules read with Section 11AC of the Act, are absent inasmuch as there is no element of fraud, collusion, willful mis-statement, suppression, etc., in availing the credit by the appellant. Thus, she submits that imposition of penalty on the appellant is not proper and justified.

4. On the other hand, the learned DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. The fact is not under dispute that on receipt of the duty paid capital goods in godown, the credit was availed by the appellant. Obtaining of Central Excise registration at the time of initial setting up of plant and machinery is not a condition precedent for availment of the Cenvat benefit provided in the statute. Since the appellant *suo moto* reversed the credit and also paid interest during the course of audit by the Central Excise department, it cannot be said that availment of Cenvat Credit was owing to the reason of fraud, collusion, suppression, etc. Since the statute clearly mandates imposition of penalties, in the eventuality, where there is involvement of fraud, collusion, etc., which admittedly was absent in this case, are of the view that imposition of penalty by the authorities below cannot be sustained in the eyes of law.

7. Therefore, we do not find any merits in the impugned order, so far as it imposed penalty on the appellant. Accordingly, after setting aside the penalty imposed in the impugned order, we allow the appeal filed by the appellant with consequently benefits, if any, as per law.

(Pronounced and dictated in court)

(P Anjani Kumar)	**(S K Mohanty*)***
Member (Technical)	***Member (Judicial)***

PJ