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

APPEAL No. E/85598/2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-724/2017-18 dated 27/11/2017 passed by Commissioner of Central Tax (Appeals-I), Pune)

Bridgestone India P. Ltd. **Appellant**

Vs.

Commissioner of Central Excise& **Respondent**

Service Tax ,Pune-I

Appearance:

Shri R.S. Sharma (Advocate) for appellant
Shri Sanju Hasija Superintendent for respondent

CORAM:

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

Date of Hearing: 25/06/2018
Date of Decision: 25/06/2018

ORDER NO **-A/86795 / 2018**

This appeal is directed against the impugned order dated 27/11/2017 passed by the Commissioner of Central Excise (Appeals), Pune. Vide the impugned order, Learned Commissioner (Appeals) has upheld the penalty imposed in the adjudication order under Rule 15 (2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

2. The Learned Advocate appearing for the Appellant submits that due to inadvertence, Development Cess paid on the imported commodity was taken as CENVAT credit by the appellant and on pointing out such irregularity by the audit officers, such credit entry was reversed by the appellant before issuance of the show cause notice. He further submits that since the appellant had sufficient balance in its CENVAT account and the credit particulars were duly reflected in the monthly ER-1 returns, the charges of suppression, fraud, willful mis-statement cannot be levelled against the assessee, justifying invocation of the provisions of sub-rule (2) of Rule 15 *ibid*. To support such stand, learned Advocate has relied on the judgment of Hon'ble Bombay High Court in the case of *Commissioner of Central Excise-I v. Gaurav Mercantiles Ltd. [2005 (119) ELT 11 (Bom.)]*

3. On the other hand, Learned AR appearing for Revenue, reiterates the findings recorded in the impugned order and further submits that since irregularly availed CENVAT credit was reversed subsequent to the objection raised by the audit wing of the department, the appellant is exposed to the penal consequences provide in the statute. He has relied on the judgment of Hon'ble Allahabad High Court in the case of *K.A. Forward Shoe Factory v. Assistant Commissioner of Central Excise* [2017 (356) ELT 369 (All.)] and *Commissioner of*

Central Excise, Customs & Service Tax, Noida v. Precision Pipes and Profile Company Ltd. [2014 (302) ELT 184 (All.)] to support his stand.

4. Heard both sides and perused the case records.

5. It is an admitted fact on record that the appellant had sufficient balance in its CENVAT account during the period between taking of irregular credit and subsequent reversal thereof. Further, the CENVAT credit particulars were also reflected in the ER-I returns and CENVAT credit register. Based on the records maintained by the appellant, audit officer of the department observed such discrepancy and thereafter, the appellant had reversed the CENVAT Credit before issuance of the show cause notice. On perusal of the audit report no. 803/2013-14 dated 22/04/2014, I find that the audit officers had not specifically alleged regarding the involvement of the appellant in the activities of fraud, collusion, suppression etc., in defrauding the Government revenue. Thus, under such circumstances, the provisions of sub-rule (2) of Rule 15 read with section 11AC *ibid* cannot be invoked for imposition of the penalty on the appellant. I find support from the judgment of the Hon'ble Bombay High Court in the case of *Gaurav Mercantiles Ltd.* (supra), wherein imposition of penalty was set aside, holding that once duty is paid prior to issuance of show cause notice, the proceedings have to be stopped and the

department cannot proceed further for imposition of penalty. The judgment of the Allahabad High Court relied on by the Learned AR for Revenue are distinguishable from the facts of the present case, in as much as, the charges of fraud, collusion misstatement etc., were not substantiated by Revenue and thus, those aspects were not considered by the Hon'ble Court.

6. In view of the above discussions, I do not find any merits in the impugned order, so far as imposition of penalty on the appellant is concerned. Accordingly, after setting aside the impugned order, is allowed in favour of the appellant to such extent.

(Pronounced in court)

(S.K. Mohanty)
Member (Judicial)

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