CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench

Service Tax Appeal No. 86295 of 2019

(Arising out of Order-in-Appeal No. NGP-EXCUS-000-APP-235-18-19 dated 13.11.2018 passed by the Commissioner of Central Excise (Appeals), Nagpur)

M/s. ESAB India Ltd. **Appellant**
B-28, MIDC Industrial Area,
Kalmeshwar, Maharashtra 441 501.

Vs.

Commissioner of Central Excise, Nagpur **Respondent**
P.O. Box 81, GST Bhavan, Civil Lines,
Telangkhedi Road, Nagpur 440 001.

Appearance:

None for the Appellant
Shri Prabhakar Sharma, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 03.08.2022
Date of Decision: 03.08.2022

FINAL ORDER NO. A/85681/2022

This appeal is directed against Order-in-Appeal No. NGP-EXCUS-000-APP-235-18-19 dated 13.11.2018 passed by the Commissioner of Central Excise (Appeals), Nagpur. By the impugned order, the Commissioner (Appeals) has held as follows:-

"ORDER

I uphold the Order-in-Original no. 60/DEM/CEX/Dn.Kal/2017-18 dated 14.12.2017 passed by Assistant Commissioner, CGST & Central Excise, Division Kalmeshwar, Nagpur-II and disallow the appeal filed by the appellant."

1.2 Assistant Commissioner has vide the order-in-original held as follows:-

"ORDER

(i) I confirm and disallow the Cenvat Credit of Rs.17,875/- (Rs. Seventeen Thousand Eight Hundred Seventy-five only) and order to recover the same from the Noticee under Rule 14 of Cenvat Credit Rules, 2004 read with section 73 of the Finance Act, 1994 & section 174 of Goods & Services Tax Act, 2017.

(ii) I Confirm and charge interest at appropriate rate/rates on the above Cenvat Credit disallowed and order to recover the same from the Noticee under Rule 14 of the Cenvat Credit Rules, 2004 read with section 75 of the Finance Act, 1994 & section 174 of Goods & Services Tax Act, 2017.

(iii) I impose a Penalty of Rs.17,875/- (Rs. Seventeen Thousand Eight Hundred Seventy-five only) upon them under Rule 15 of the Cenvat Credit Rules, 2004 read with section 78 of the Finance Act, 1994 & section 174 of Goods & Services Tax Act, 2017, which the Noticee shall pay forthwith."

2.1 Appellant has filed this appeal challenging the denial of cenvat credit of Rs.17,875/- and equivalent penalty imposed on them. In terms of Section 35B(1) of the Central Excise Act, 1944, the Tribunal may refuse to admit an appeal filed before it, if the value of the disputed amount is less than Rs.50,000/-. The proviso to Section 35B(1) reads as follows:-

"Provided further that the appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where—
(i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
(ii) the amount of fine or penalty determined by such order, does not exceed fifty thousand rupees."

2.2 In the present case on this ground alone, as the amount involved is very petty, this appeal should be held to be non-admissible and dismissed.

2.3 I also find that the matter has been listed for hearing on 21.01.2022, 21.03.2022, 08.06.2022 and today. On all four occasions, either the appellant was not represented or has sought adjournment on some ground.

2.4 Section 35C(1) and 35C(1A) of the Central Excise Act, 1944 provides as under:

Section 35C. Orders of Appellate Tribunal. -

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(1A)The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

2.5 Rule 20 of the CESTAT Procedure Rule, 1982 reads as under:

RULE 20. Action on appeal for appellant's default. *— Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits :*

Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the *appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal."*

3.1 In view of the above, the appeal is dismissed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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