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ORDER IN APPEAL :

M/s. Sanstar Bio-Polymers Ltd., Santosh Dinar, Sukhpur Road, Post - Morgar, Bhachau (Kutch) (hereinafter referred to as 'appellant') filed present appeal against Order-in-Original No. 7/DC/Anjar-Bhachau/2017-18 dated 30.10.2017 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, CCST Division, Anjar-Bhachau (hereinafter referred to as 'the adjudicating authority'). -

2. The brief facts of the case are that the appellant had imported steam coal/cooking coal on payment of countervailing duty @ 2% under Notification No. 12/2012-Cus dated 17.3.2012 and availed credit of CVD of Rs. 30,86,980/- paid by the appellant during FY 2012-13 to FY 2015-16 that the appellant was not entitled to avail credit of CVD in view of Rule 30(i)(b) of Central Excise Rules, 2004 (hereinafter referred to as 'CCR, 2004') as contended by the Audit on the ground that the effective rate of Central Excise duty has been prescribed under Notification No. 12/2012-CE dated 17.3.2012 with the condition that no credit shall be availed on steam coal. Show Cause Notice No. AC/01/2017-18 dated 24.5.2017 was issued to the appellant proposing recovery of central credit of Rs. 30,86,980/- under proviso to Section 11A of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') read with Rule 14 of CCR, 2004 along with interest under Section 11AA of the Act read with Rule 14 of CCR, 2004 and to impose penalty under Section 11AC of the Act read with Rule 15(2) of CCR, 2004. The impugned order confirmed recovery of central credit of Rs. 30,86,980/- along with interest and imposed penalty of Rs. 30,86,980/- under Rule 15(2) of CCR, 2004 read with Section 11AC of the Act.

3. Being aggrieved with the impugned order, appellant preferred the present appeal, inter-alia, on the following grounds: -

(i) They had not availed central credit on goods on which duties were paid either under Notification No. 1/2011-CE dated 1.3.2011 or under Notification No. 12/2012-CE dated 17.3.2012; that they had imported steam coal/cooking coal and paid Customs duty in terms of Sl.No. 122 and Sl.No. 123 of Notification No. 12/2012-Customs dated 17.3.2012. Since CVD was

paid under Section 3(1) of the Customs Tariff Act, 1975 and clause (vi.) to Rule 3(i) of CGR, 2004 allows manufacturer to avail credit of additional duty leviable under Section 3 of the Customs Tariff Act, 1975, credit of imported coking coal and steam coal waste etc. The findings of the lower adjudicating authority that the imported coal was cleared after availing the benefit of exemption Notification No. 12/2011 CE dated 13.3.2011 is incorrect and without any documentary evidence.

(i) Notification No. 12/2012-Cus. dated 17.3.2012 does not bar availment of credit and there is no restriction in Rule 3 of CGR, 2004 for availment of credit of duty paid, under Notification No. 12/2012-Cus. dated 17.3.2012.

(ii) The SON issued on 24.5.2017 for FY 2012-13 to 2015-16 is time barred since the appellant had filed monthly return at time wherein the appellant had shown credit of CVD paid on imported goods and hence, the department had knowledge that the appellant was availing credit on imported coal. The department has not proved any mala fide intent of the appellant in this case and therefore, extended period cannot be invoked in the present case.

(iv) Since the demand of credit is not legal, proper and justified, the demand of interest is liable to be set aside.

(v) The department failed to prove fraud, suppression of facts, wilful misstatement with intent to evade payment of central excise duty. Therefore, penalty under Rule 15 of CGR, 2004 read with Section 11AC of the Act is not imposable.

4. Personal hearing in the matter was attended by S/Shr. Amal P. Dave and Aditya S. Tripathi, both Advocates, who reiterated the grounds of appeal and has submitted written PH submission to say that they had not availed benefit of Notification No. 12/2012-CE but Notification No. 12/2012-Cus; that the issue has already been decided by the Hon'ble CESTAT, Ahmedabad in the case of Asahi Songwon Colors Ltd. and they submitted copy of that order dated 3.7.2018 that this case law is squarely applicable and their appeal should be allowed.

**FINDINGS:**

5. I have carefully gone through the facts of the case, impugned order grounds of appeal and the submissions made during personal hearing. The issue to be decided in the present case is as to whether the impugned order confirming recovery of central credit of Rs. 30,86,950/- and imposing penalty is correct or not.

6. The facts of the case establish that the appellant had imported coal and paid CVD at the rate prescribed vide Sl.No. 122 & 123 of Notification No. 12/2012-Cus. dated 17.3.2012, as amended. I also find that the said Notification does not put any restriction with regard to availment of central credit and clause (vii) of Rule 3(1) of CCR, 2004 allows central credit of additional duty paid under Section 3 of the Customs Tariff Act. Hence, I find that the central credit of CVD paid by the appellant at the time of import of coal is admissible to them.

7. I find that the Hon'ble CESTAT, Ahmedabad vide Order No. A/1585/2018 dated 9.7.2018 in the case of Asahi Songwon Colors Limited has held as under: -

*[Handwritten signature]*

"On careful consideration of the submissions made by both the sides, I find that the reasoning provided in Rule 3 of Central Credit Rules is as under -

"Rule 3(i), the duty of excise specified in the First schedule to the Excise Act, 1944, leviable under the Excise Act;

Provided that central credit of such duty of excise shall not be allowed to be taken when paid on any goods -

- (a) ...
- (b) specified in serial numbers 87 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-CF, dated 17<sup>th</sup> March, 2012 is available;

From the above Rule, it is observed that even if any duty is paid by availing exemption, Notification No. 12/2012-CC dated 17.3.2012, the same will not be available as central credit for the user of the goods. In the present case, admittedly, the appellant have imported coal and CVD of 2% is leviable in terms of Customs Notification No. 12/2012-Cus. There is no restriction provided in Rule 3 as regards duty paid under Customs exemption. This

notification is applicable only in respect of goods covered on which no excess duty @ 2% was paid availing Notification No. 12/2012-CE, which is not a case here. Therefore, the availability of input tax credit in respect of CVD paid under Notification No. 12/2012-Cus. Moreover, since the Notification No. 12/2012-CE is applicable only in respect of emergency manufactured local steel and not in respect of imported steel as held by the Hon'ble Supreme Court in the case of SPT Limited vs. CC, Chennai - 2015 (315) FTR 607 (SC). Therefore, even if the importer wants to avail the exemption of Notification No. 12/2012-CE for payment of CVD, the same will not be available to the importer. Therefore, in any case, in the case of import the Notification No. 12/2012-CE is not relevant.

Remains disposed.

8. The present appeal is squarely covered under the above case law. Therefore, I set aside the impugned order and allow appeal filed by the appellant in view of Para 6 & Para 7 as above.

8. अनेककर्तृकार वर्ष की गई अर्जित कतिपय अपीलें तर्ही से लिये जाते हैं।

9. The appeal filed by the appellant is disposed off in above terms.

For  
  
 Officer in Charge

(कुनर सतीष)  
 जयान अधिकारी (अपीलें)

**By Speed Post**

To,

M/s. Sansar Bio Polymers Ltd.,  
 Santosh Dham Sukhpar Road,  
 Post - Mangar Bhachau (Kutch)

मैजरा संतर जगो-मैहें नैट जेनेरेट,  
 सतीष धम, सुखपर रोड,  
 पोस्ट - मंगर भचौ (कच्छ)

**Copy to:**

- 1) The Principal Chief Commissioner, CGST & Central Excise Ahmedabad Zone Ahmedabad for kind information please
- 2) The Commissioner, CGST & Central Excise, Gandhidham Commissionerate, Gandhidham (Kutch) for necessary action.
- 3) The Deputy Commissioner, Central GST Division, Anjar-Bhachau for necessary action.
- 4) Guard File