CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 12720 of 2018

[Arising out of OIA-VAD-EXCUS-002-APP-149-2018-19 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

M/s Banco Products India Ltd **........Appellant**
Vilage-Ankhi, Jambusar,
Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **.....Respondent**
1st Floor, Room No.101,
New Central Excise Building,
Vadodara,
Gujarat-390023

APPEARANCE

Sh. Shailesh Vyas, Advocate for the Appellant
Sh. G. Jha, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

FINAL ORDER NO. A/ 11452 /2019

DATE OF HEARING: 31.07.2019
DATE OF DECISION: 31.07.2019

RAMESH NAIR

This appeal is directed against Order-In-Appeal passed by the Ld. Commissioner (Appeals). I observed from the order that the appeal was dismissed on the ground of limitation inasmuch as the appeal was filed belatedly with the delay of 5 days along with COD application. The Ld. Commissioner (Appeals) has also given the findings on merit that the cenvat credit is not admissible on outward GTA as per Hon'ble Supreme Court decision dated 01.02.2018 in the case of Ultratech Cement Ltd 2018 (9) GSTL 337 (SC).

2. Heard both the sides and perused the records. As regard the limitation, I find that the appellant have made an application for condonation of delay. The Ld. Commissioner (Appeals) is empowered to condone the delay of 30 days after normal period of 60 days. The condonation of delay was sought by the appellant on the ground that concern staff was not well and to that effect the medical certificate was

submitted. In my considered view on the basis of medical ground, the Ld. Commissioner (Appeals) should have condoned the delay. As regard merit of the case, firstly, once he rejects the appeal on limitation, he has no jurisdiction to entertain the appeal on merit. Secondly, he upheld the denial of cenvat credit on the basis of Hon'ble Supreme Court judgment in Ultratech Cement Ltd case, subsequently, this Tribunal has passed judgment in case of Ultratech Cement Ltd and other cases after considering Hon'ble Supreme Court judgment in Sanghi Industries 2019 (2) TMI 1488, therefore, in the light of subsequent development, the matter needs to be re-considered on merit.

3. Accordingly, I set aside the impugned order and remand the matter to the Ld. Commissioner (Appeals) to pass afresh order on merit without going into the time bar issue. The appeal is allowed by way of remand to the Ld. Commissioner (Appeals).

(Dictated & pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Seema