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

REGIONAL BENCH – COURT NO. 02

Excise Appeal No. 10022 of 2013

[Arising Out Of OIA-CCEA-SRT-II-SSP-103-U-S35A-3--FINALORDER- Dated- 29/11/2012 Passed By Commissioner of Central Excise-SURAT-I]

Exzakta Meccanic **.....Appellant**
1706/2, Gidc Estate, ANKLESHWAR
GUJARAT

VERSUS

C.C.E. & S.T.-Surat-ii **.....Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar, Surat,
Gujarat-395001

WITH

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APPEARANCE:
None appeared for the Appellant
Shri. Anand Kumar, Superintendent (Authorized Representative) for the Appellant

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO. A / 11889-11890 /2023

DATE OF HEARING:01.09.2023
DATE OF DECISION:01.09.2023

SOMESH ARORA

In the instant case, five dates were given earlier but no one appeared, the matter pertains to year-2013, the same is therefore taken for decision on merits. Appellants have been denied Cenvat Credit after availing Exemption Notification No. 08/2003-CE dated 01.03.2023 pertaining to SSI on exceeding the turnover of Rs. 1.00 Crore w.e.f 13.08.2006. As per department, no stock position was intimated to them as per the legal requirement as on 13.08.2006 while transiting of the unit from non tax payer to SSI Tax Payer Unit. The credit was availed on the inputs lying in stock on 13.08.2006, same came to the notice of the department while conducting audit of the books of account in February, 2008. Thereafter, show cause notice was issued invoking extended period on 14.07.2011 which has been upheld by both the lower authorities. The appellants *inter alia,* are aggrieved on extended period having been invoked, even if they failed to intimate the stock position since the same was duly reflected in their books of account in all the years from 13.08.2006 to February, 2008 and department found during audit the position reflected in their books of accounts only. Appellants are also placing reliance on various returns filed by them periodically once they were in tax network and which initially showed that there was stock lying as on the cut off date of 13.08.2006, with them.

2. Learned AR relies upon the order of the lower authorities to emphasize that intimating the stock position was a legal requirement and therefore the Cenvat Credit availed by them on the stock available was in-correct.

3. Considered. From the whole narrative of the facts made by the appellant, it is clear that party started availing SSI benefit on crossing 1 Crores value w.e.f 13.08.2006 as a running unit. All the stock position was duly reflected in books of accounts which was later captured during visit and conduct of audit during February, 2008 by the department. Thereafter, the

show cause notice was issued on 14.07.2011 for a matter in which cause of action arose on 13.08.2006. However, there is nothing on record to prove that department has shown suppression etc. with intent to evade and same is not in details forthcoming from findings. Also in view of the fact that it was the audit party that found the stock position from the party's record only and the fact that the party was a running concern when it transited to SSI scheme under Central Excise and therefore in normal course would have some stock position and merely timely intimation was the lapse, the charge therefore on limitation appears unsustainable.

4. In view of the foregoing, the demand invoking extended period is not sustainable, the same is therefore set aside on limitation with consequential relief. Appeals are allowed.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)