Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No.12097 of 2018
(Arising out of OIA-CCESA-SRT-APPEALS-PS-874-2017-18 dated 28.03.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

N R Agarwal Industries Ltd. **……Appellant**
(UNIT-IV), PLOT NO. 901/P,
3RD PHASE, GIDC, VAPI, GUJARAT

VERSUS

C.C.E. & S.T. Vapi **………Respondent**
4TH FLOOR...ADHARSH DHAM BUILDING,
OPP. TOWN POLICE STATION, VAPI-DAMAN ROAD, VAPI
VAPI, GUJARAT-396191.

APPEARANCE:
Shri. S. Suriyanarayanan, Advocate for the Appellant
Shri R.K. Bhashkar, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12609 /2021

DATE OF HEARING: 24.08.2021
DATE OF DECISION: 14.12.2021

RAMESH NAIR

The issue involved in the present appeal is that whether the appellant is entitled for cenvat credit on the input service when the credit was availed after one year from the date of issue of invoices.

2. Shri S. Suriyanarayanan, Learned Counsel appearing on behalf of the appellant submits that though the credit was taken after one year from the date of issue of invoices but in all the cases the date of issue of invoices are prior to the amendment Notification of Rule 4(1) according to which the appellant are supposed to take cenvat credit within six months / one year from the date of issue of invoices. He submits that since the invoices in question were issue prior to the insertion of stipulated time period of six months / one year, this amendment fixing the time limit shall not apply, accordingly, the cenvat credit cannot be denied. In support of his submission, he placed reliance on the following judgements:

- 2007 (208) ELT 19 (Tri. LB) - MRP Ltd. vs CCE, Mangalore
- 2009 (246) ELT 364 (Tri.- Ahmd.) Banner Pharma Caps Pvt. Ltd.

- 2011 (268) ELT 296 (SC) Thirumalai Chemicals Ltd. vs UOI
- 2012 (284) ELT 202 (Tri. Chennai) CCE, Chennai-III vs Ford India Ltd.
- 2013 (293) ELT 119 (Tri. Ahmd.) – Alembic Ltd. vs CCE Vadodara
- 2015 (318) ELT 240 (Kar.) – CCE & ST Bangalore vs FORSOC Chemicals (I) Pvt. Ltd.

3. Shri R K Bhashkar, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterated the findings of the impugned order. He also placed reliance on the following judgements:

- 2018 (9) GSTL 337 (SC)-CCE vs Ultratech Cement Ltd.
- 2018 (13) GSTL J101 (SC)- Ultratech Cement Ltd. vs Commr.
- 2018-TIOL-3130-CESTAT-MAD-Alkraft Thermotechnologies P. Ltd.
- 2018-TIOL-2226-CESTAT-DEL-Pee Cee Cosma Sope Ltd. vs CCE, Jodhpur
- 2019-TIOL-181-CESTAT-Mum-CCE Pune-I vs Chevrolet Sales India Pvt. Ltd.

4. I have carefully considered the submissions made by both the sides and perused the records.

5. I find that there is no dispute that the appellant have availed the cenvat credit after one year from the date of issue of invoices. However, the dates of issue of invoices are undisputedly prior to the amended Rule 4(1) whereby the time limit of six months/ one year form the date of issue of invoices was fixed for availing the cenvat credit. In various judgements, it has been held that when on the date of issue of invoices, the time limit for taking credit was not prescribed, therefore, in respect of those invoices, the subsequent amendment stipulating the time limit for availing the credit shall not apply. The relevant judgement is cited below:

- **Vijay Kumar Srivastaw vs CCE & ST Daman (Final Order No. 11657-11658/2021)**

"4. I have heard both the sides and perused the records. I find that the major issue to be decided is that the cenvat credit was availed after 01.09.2014, in respect of invoices issue prior to 01.09.2014. In the light of

the amendment notification no 21/2014-CE(N.T.) whether the claim of cenvat credit is time barred. I find that though there are various decision on the issue however, the Division Bench in the case of BHARAT ALUMINIUM COMPANY LTD. V/S. JOINT COMMISSIONER OF CENTRAL EXCISE, CENTRAL TAX GOODS AND SERVICE TAX. held that the limitation of 6 months provided as per notification no 21/2014-CE(N.T.) is not applicable in cases where the invoices were issued before the notification came into effect i.e. 01.09.2014. the Delhi bench in said case has relied upon the judgment of Delhi High Court in the case of GLOBAL CERAMICS PRIVATE LIMITED AND ORS.-2019-TIOL-1129-HC-DEL-CUS. The relevant para of said judgment of BHARAT ALUMINIUM COMPANY LTD. (Supra) is reproduced below.

> *5. Having expressed our anguish, we note that the issue is no more res Integra. Reliance can be placed to the following decisions; (i) Indian Potash Ltd. vs Commissioner of Central GST, Meerut [2018 (10) TMI 1367-CESTAT Allahabad] (ii) Hindustan Coca Cola Beverages Pvt. Ltd. vs. Commissioner of Central Tax [2018 (10) TMI 1366- CESTAT Bangalore] (iii) Industrial Filters & Fabrics Pvt. Ltd. vs. CGST & CE, Indore[2019 (1) TMI 1426-CESTAT New Delhi] (iv) Suryadev Alloys and Power Pvt Ltd. vs. Commissioner of GST & Central Excise, Chennai [2018 (11) TMI 1019-CESTAT Chennai] 4 E/53851- 53852/2018-[DB] (v) Umesh Engineering Works vs. Commissioner of Central Tax, Bengaluru West [2019 (1) TMI 1158- CESTAT Bangalore] (vi) Sarda Energy and Minerals Ltd. vs. CCE & ST, Raipur [2019 (4) TMI 473-CESTAT New Delhi] Wherein it was clearly held that the six month limitation provided with effect from 01/09/2014 would not apply to the cenvatable invoices issued prior to said date. The other decisions relied upon by the Ld. Advocate are also to the same effect but multiplying the precedent decisions would not make a difference as it is a settled law. Further, not only various Tribunals' decisions but Hon'ble Delhi High Court also in case of Global Ceramics Private Limited and Ors. vs. The Principal Commissioner of Central Excise and Ors. W.P. (C) 6706/2016 and W.P. (C) 9152/2016 has also observed to the same effect in paragraph 11.4 of their decisions.*
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> *6. As such, we find that the issue is no more res Integra and stands settled in favour of the assessee. However, the fact that the invoices in question were prior to 01/09/2014 is required to be verified. The Original Adjudicating Authority is directed to do so, with the association of appellant to whom an opportunity would be given.*

4.1 In view of the above decision which is based in Delhi High Court judgment of GLOBAL CERAMICS PRIVATE LIMITED AND ORS (supra), I am of the view that the appellant is entitled for the Cenvat Credit since all the invoices on which cenvat credit was claimed were issued prior to 01.09.2014."

6. From the above judgement it can be seen that the identical issue has been considered by this Tribunal and held that in respect of invoices issued prior to the amendment, the time limit prescribed in the amended Rule 4(1)

and 4(7) shall not apply. Accordingly, the appellant are entitled for the cenvat credit. The impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 14.12.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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