IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No.E/2176/2012-EX[SM] with E/MISC/70532/2016

(Arising out of Order-in-Appeal No. 63-CE/MRT-I/2012 dated 13/03/2012 passed by Commissioner of Central Excise (Appeals), Meerut-I)

M/s Upper Doab Sugar Mills **Appellant**

Vs.

Commissioner of Central Excise, Meerut-I **Respondent**

Appearance:

Shri A.P. Mathur, Advocate for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 04/05/2018
Date of Decision : 04/05/2018

FINAL ORDER NO-70933/2018

Per: Anil Choudhary

The issue in this appeal is whether the show cause notice is barred by limitation and the provisions of extended period of limitation is invocable or not.

2. The brief facts of the case as per the show cause notice dated 05.03.2010 is that the appellant is a manufacturer of Sugarcane and Molasses. An Audit was conducted in the appellant's premises from 10th to 12th January, 2008 whereby the records were scrutinized including the Balance Sheet for the years 2006-07 and 2007-08. The audit party observed

that the appellant had cleared excisable goods namely waste & scrap of Iron Steel & Aluminium, generated through Machinery turnings, boring in their own work shop or through wear and tear/discarded/obsolete Capital goods without payment of Central Excise duty. Based on such audit objection the Range Superintendent had directed the appellant to deposit the duty amount of Rs.2,50,512/- and also raised an objection regarding wrongly taken Cenvat credit of Rs.3,872/-. The appellant filed his reply to the audit objection on 10th June, 2008 stating that so far the Cenvat credit of Rs.3,872/- is concern, the same is in respect of wire, rope classifiable under Chapter Heading No.73 of Central Excise Tariff Act, 1985, but as the same is part of consignment of Electrical Overhead Traveling Cranes on fixed support (E.O.T. Cranes), also known as Feeder table Structure falling under Chapter Heading No.84261100 which is used for carrying out raw sugarcane within the factory, so these are material handling equipment qualifying as capital goods under the CCR, 2004 and the same is part/component of the cranes and accordingly, the same is eligible for credit as capital goods. So for the demand of Rs.2,50,512/- is concerned, the appellant stated that they had discarded two old boiler in the year 2005-06 which were purchased in 1966-67, to expand the capacity of boilers. The scrap sold by the applicant was of the machine/boiler acquired prior to the year 1994 (prior to modvat scheme), on which Modvat/Cenvat credit was not availed. As the Modvat credit scheme on capital goods come into existence in the year 1994-95, thus, there is no question of any Cenvat/Modvat credit being taken on the capital goods sold as scrap during the financial year 2005-06 to 2006-07. Rule 3 (5A) of Cenvat Credit Rules 2004 applies in case where the assessee have taken Modvat credit or Cenvat credit on any capital goods which is later on disposed of either as a used capital goods or as a scrap. Thus, in absence of any condition precedent for retracting the provisions of Rule 3 (5A) of CCR, 2004 the appellant is not required to pay any amount under the said Rule. However, the appellant accepted the liability under Rule 3 (5A) with respect to Modvatable used nickel screen scrap amounting to Rs.77,070/- on which the duty along with Cess. had been reversed, according to their record vide Entry No.227 dated 1st February, 2008 on being pointed out by the audit party.

3. Learned Counsel for the appellant submits that that on the basis of the said audit objection, a show cause notice has been issued on 05th March, 2010 which is issued after about 22 months after the audit objection. In this view of the matter, learned Counsel has also placed a reliance on the ruling of Hon'ble Allahabad High Court in the case of Commissioner of Central Excise & Service Tax Vs M/s Triveni Engineering & Industries Ltd. reported at 2015 (317) ELT 408 (All.). Accordingly, learned Counsel for the appellant have

contended that the show cause notice is barred by limitation and under the facts and circumstances the extended period of limitation is not invokable. Accordingly, he prays for allowing the appeal of appellant by setting aside the impugned order.

4. Heard the learned A.R. for revenue, who has supported the impugned order.

5. Having considered the rival contentions and on perusal of records, I am satisfied that all the information and transation in question has been recorded in the books of account maintained in the normal course of business. Further, it is admitted fact that upon audit objection the appellant had reversed the appropriate amount under Rule 3 (5A) of CCR, 2004 and had also filed their categorical reply to the objections of audit received by the department on 10th June, 2008. Thus, there is no case of any suppression or malafide on the part of the appellant. The learned Counsel has also relied on the ruling of Hon'ble Allahabad High Court in the case of M/s Triveni Engineering & Industries Ltd. (supra) wherein the Hon'ble Allahabad High Court have observed that the show cause notice was issued after a gap of 22 months after the audit was conducted. It was further held that the proviso to Section 11A of CEA, 1944 is not applicable because show cause notice does not indicate that there was deliberate act of suppression of fact, fraud, mis-statement, etc. Accordingly, I hold that the show cause notice is hit by

limitation, as the proviso to Section 11A for extended period is not invokable.

6. Accordingly, the appeal filed by the appellant is allowed by setting aside the impugned order. Appellant shall be entitled to consequential relief, in accordance with law.

(Dictated in Court)

(Anil Choudhary)
Member (Judicial)

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