

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70622 of 2021

(Arising out of Order-in-Appeal No.154/ST/Alld/2021 dated 21/06/2021 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Allahabad)

M/s Super Vision,
(85/321, Laxmi Purwa, Kanpur)

.....Appellant

VERSUS

**Commissioner of Central Excise &
CGST, Allahabad**

....Respondent

(38 M.G. Marg, Civil Lines, Allahabad)

APPEARANCE:

Written submission on record, for the Appellant
Smt Chittra Srivastava, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70331/2025

DATE OF HEARING : 23 May, 2025
DATE OF DECISION : 23 May, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.154/ST/Alld/2021 dated 21/06/2021 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Allahabad. By the impugned order following has been held:-

"4.10 In view of the above, I modify the impugned Order dated 31.07.2020, as under:-

- (i) Confirmation of demand of Service Tax (including Cesses) is reduced to Rs.5,78,010/ alongwith interest,*
- (ii) Penalty imposed upon the appellant, under Section 78 of the Act, is reduced to Ra 5,78,010/-; and*
- (iii) Penalty imposed under Sections 77(1)(a), 77(1)(b), 77(1)(c) & 77(2) of the Act, shall remain unchanged."*

2.1 On the basis of specific intelligence that appellant was providing Cable Operator Services taxable under Finance Act, 1994 without obtaining service tax registration and without paying service tax. Inquiry was initiated against them.

2.2 Inquiry and investigations made, revealed that appellant during the period from 2013-14 to 2017-18 (upto June, 2017) did not pay service tax including cess of Rs.10,45,238/-. They were providing taxable services of re-transmission of broadcast television signals received from their multi-system operator (MSO) i.e. M/s DEN Ambey Cable Network Pvt. Ltd., Kanpur (M/s DEN) and the benefit of threshold exemption under Notification No.33/2012-ST dated 20.06.2012 was not available to them.

2.3 Show cause notice dated 10.04.2019 was issued to the appellant asking them to show cause as to why-

"(i) The Service Tax amounting to Rs.10,45,238/- (including S. Tax, Education Cess. Higher Education Cess, Swach Bharat Cess and Krishi Kalyan Cess), as discussed above, should not be demanded and recovered from them by invoking extended period under proviso to Section 73(1) of Finance Act 1994 read with Section 68 of the Finance Act, 1994 and Rule 6 of Service Tax Rules, 1994, as the Service Tax has not been paid with intent to evade payment of Service Tax by suppressing the facts from the department read with Section 174(2) of the CGST Act, 2017.

(ii) interest should not be demanded / recovered from them under the provisions of Section 75 of the Finance Act, 1994 on the confirmed amount of service tax.

(iii) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for failure to pay Service Tax and for suppression of the value of taxable service with intent to evade the payment to service tax, thereby contravening the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax (Determination of Value) Rules, 2006.

(iv) Penalty should not be imposed upon them under Section 77(1)(a), 77(1)(b), & 77(1)(c) of the Finance Act, 1994, for failure to take registration under the category of "Cable Operator Service" within time and manner as prescribed under Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994, failed to maintained books of Accounts and other documents, failed to furnish information and produced documents called by the Department (as amended),

(v) Penalty should not be imposed upon them under Section 77(2) of the Chapter V of the Finance Act, 1994 for contravention of Section 70 of the Act Ibid read with Rule 7 of the Rules ibid."

2.4 The said show cause notice was adjudicated as per the Order-in-Original No.17/ST/ACK-II/2020 dated 31.07.2020 by holding as follows:-

"ORDER

- (i) Against the demand of service tax of Rs.10,45,238/- proposed in the Show Cause Notice, I confirm the demand of Service Tax of Rs.6,88,014/- (including Cess). under proviso to Section 73(1) of Finance Act 1994, read with Section 174(2) of the CGST Act, 2017. against M/s Super Vision (Proprietor Shri Shyam Lal Gupta), 85/321, Laxmi Purwa, Kanpur which is recoverable from him along with Interest under Section 75 of the Finance Act. 1994. Remaining demand of service tax of Rs.3,57,224/- is hereby dropped.*
- (ii) I impose penalty of Rs.6,88,014/- under Section 78 of the Finance Act, 1994 upon M/s Super Vision (Proprietor Shri Shyam Lal Gupta), 85/321, Laxmi Purwa, Kanpur.*
- (iii) I impose penalty of Rs. 10,000/- each under Section 77(1)(a).77(1)(b). & 77(1)(c) of the Finance Act, 1994 upon M/s Super Vision (Proprietor Shri Shyam Lal Gupta), 85/321, Laxmi Purwa, Kanpur.*

(iv) *I impose penalty of Rs. 10,000/- under Section 77(2) of the Chapter V of the Finance Act, 1994 for contravention of Section 70 of the read with Rule 7 of the Rules ibid upon M/s Super Vision (Proprietor Shri Shyam Lal Gupta), 85/321, Laxmi Purwa, Kanpur."*

2.5 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order referred in para 1 above.

2.6 Aggrieved appellant have filed this appeal.

3.1 Learned Counsel for the appellant has filed a written submission. I have heard Smt Chitra Srivastava learned Authorised Representative appearing for the revenue.

3.2 Through the written request learned Counsel submits that-

- Impugned order extends the benefit of threshold exemption and cum tax benefit and re-quantified the demand in view of the decision of Chandigarh Bench of Tribunal in the case of M/s Blue Star Communication Final Order No.A/60167-60171/2019 dated 22.02.2019 and M/s Antares Services Pvt. Ltd. which are on the same line.
- However they are in appeal only for allowing the Cenvat credit of input services beyond the period of six months/01 year under proviso of Rule 4(7) of Cenvat Credit Rules, 2004.
- They also claim that demand should be restricted to normal period of limitation as has been done in the cases relied in the impugned order.

3.3 Learned Authorized Representative reiterates the findings recorded in the orders of the lower authorities. Further, she places reliance upon the following decisions in support-

- Kusum Ingots & Alloys Ltd. [2000 (120) ELT 214 (T-LB)];
- BHEL [2007 (219) ELT 609 (T-Bang)]
- Rathi Ispat Ltd. [2010 (251) ELT 199 (All)]
- NVK Mohamed Sultan Rawther & Sons [2009) ELT 741 (T-Chen)]
- Ashok Leyland Ltd. [2005 (187) ELT 355 (T-Chen)]

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 For upholding Order-in-Original, impugned order records as follows:-

"4.2 First of all I take the issue as to whether the appellant was eligible for the credit of Service Tax paid by them, on the invoices/bills of M/s DEN, in accordance/compliance with the provisions of the CENVAT Credit Rules, 2004, I observe that vide Notification No 21/2014-CE(NT) dated 11.07.2014, after the fifth proviso in Rule 4(7) of the CENVAT Credit Rules, 2004, the following proviso was inserted for the first time to fix time limit to avail CENVAT credit w.e.f 01.09.2014:

Provided also that the manufacturer or the provider of output service shall not take Cenuat Credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9

Later on, the words 'six months' was substituted by words one year in sixth proviso, of Rule 4(7) of CENVAT Credit Rules, 2004 w.e.f. 01.03.2015 vide Notification No. 6/2015-CE(NT) dated 1.3.2015.

4.2.1 A careful perusal of above proviso reveals that Cenvat credit of service tax in respect of input service shall not be allowed after the stipulated period of one year of the date of issue of duty paying document specified under Rule 9(1). Thus, appellant has to avail Cenvat credit within one year of the date of issue of duty paying document specified under Rule 9(1)

4.3 I also observe that the Rule 9(6) of the CENVAT Credit Rules 2004 provides that the manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the

admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit". Further Rule 9(9) of the CENVAT Credit Rules 2004 stipulates that "the provider of output service availing CENVAT credit, shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year".

I observe that the appellant was neither registered with the department nor filed statutory ST-3 returns showing availment/utilization of eligible CENVAT credit in the said returns. Thus, it is evident that the appellant failed to avail CENVAT Credit on input services within prescribed limit of six months/one year thereby contravened the sixth proviso to the Rule 4(7) of the CENVAT Credit Rules, 2004. It is well settled principle that the claim of CENVAT Credit taken and/or utilized crystallizes only when the appellant has maintained CENVAT credit records & files statutory returns before the Department claiming the eligible CENVAT credit in the said returns. Thus, the CENVAT Credit can only be availed by filing the statutory ST-3 return, if no return is filed, it cannot be presumed that appellant has legitimate credit available within the prescribed time limit & would be available for infinite period of time. The appellant has also failed to maintained/produced any CENVAT record for availment of CENVAT credit within prescribed time limit, therefore, contravened the provisions of Rule 9(6) & Rule 9(9) of the CENVAT Credit Rules, 2004. Therefore, I am of the considered opinion that the appellant is not eligible for CENVAT credit due to non-fulfillment of condition mentioned in the Rule 4(7), 9(6) & 9(9) of the CENVAT Credit Rules, 2004.

4.5 Now I take the issue whether the appellant is providing branded service or not. I observe that in this case, the appellant is cable operator and providing cable services to the subscribers on the basis of signals received from the

MSO i.e M/s DEN. The subscriber has not asked for any brand for providing the said services. In fact, the appellant is also not providing any branded service as M/s DEN is supplying signal to the appellant which has been transmitted to the subscribers, in that circumstances, there is no relation of brand name to the ultimate customers. Therefore, I hold that the appellant is not providing any branded service to the subscribers; therefore, the appellant is entitled to avail the benefit of exemption Notification No. 33/2012-ST dated 20.06.2012.

4.6 The appellant has also contested that computation of service tax demand @ 14.5% for entire F.Y 2015-16 and 15% for the entire F.Y 2016-17 is incorrect. I observe that during the financial year 2015-16, the service tax rate was 12.36% for the period 01.04.2015 to 31.05.2015, @ 14% for the period 01.06.2015 to 14.11.2015 and @ 14.50% for the period 15.11.2015 to 31.03.2016. Similarly, during the financial year 2016-17, the service tax was levied @ 14.50% for the period 01.04.2106 to 31.05.2016 and @ 15.00% for the period 01.06.2016 to 31.03.2017. In the present case it is on record that the appellant has not provided any information/documents to the department during the course of enquiry proceedings, therefore, service tax demand was calculated on the basis of entertainment tax paid by the appellant as provided by the Commercial Tax Officer, Kanpur. The appellant has neither provided month wise details of gross amount received by them during the F.Y 2015-16 & 2016-17 during the adjudication proceedings nor provided at the appellate stage. Therefore, the contention of the appellant is not acceptable.

4.7 In view of the above discussion & findings, I hereby determine the service tax liability after excluding the entertainment tax from the taxable value and allowing the benefit of threshold exemption & cum-tax benefit, as under:

Period	Value excluding entertainment tax	Threshold exemption	Taxable value after allowing cum tax value & Threshold exemption	Rate of S Tax	Service Tax payable
2013-14	1042236	1000000	37590	12.36%	4646
2014-15	1198227	0	1066418	12.36%	131809
2015-16	1233378	0	1077186	14.50%	156192
2016-17	1806069	0	1570495	15.00%	235574
2017-18 (upto June'17)	381714	0	331925	15.00%	49789
Total	5661624		4083614		578010

4.8 It is observed that appellant has neither taken service tax registration nor filed any ST-3 returns, whereas under the self-assessment procedure specified in the statute, they were required to assess & pay their Service Tax liability correctly, on their own. The non-payment of Service Tax could be detected only during the course of enquiry conducted by the Department. Thus, it is a clear case of suppression of facts and contravention of the statutory provisions, with intent to evade payment of Service Tax. Thus, I find that extended period of limitation has been rightly invoked in this case for confirming the demand of Service Tax and imposing penalty under Section 78 of the Act. Further, I also observe that the appellant has failed to take service tax registration in due time, failed to maintain proper records & also failed to furnish the information/documents to the department, therefore, penalties imposed by the adjudicating authority under Sections 77(1)(a), 77(1)(b) & 77(1)(c) of the Act are justified. The appellant has never filed ST-3 returns, therefore, penalty imposed by the adjudicating authority for non-filing of ST-3 returns for the period April 2013 to June 2017 under section 77(2) of the Act is also justified."

4.3 I find that the show cause notice was issued to the appellant after the decision dated 22.02.2019 of Chandigarh Bench of the Tribunal in the case of M/s Blue Star Communication and others. In the said case Tribunal has held as follows:-

"11. On careful consideration and submission made by both sides, the following issues emerges as under:-

a) Whether the appellants are providing branded service or not?

Consequently they are entitled for exemption under Notification No.6/2005-ST dated 01.03.2005 and Notification No. 33/2012-ST dated 20.06.2012.

b) Whether the extended period of limitation is invokable or not?

c) Whether the best judgement under Section 72 of the Finance Act, 1994 has been assessed correctly or not?

d) Whether the appellants are liable to pay service tax on the gross value of the services provided by them or not?

e) Whether the appellants are entitled for cenvat credit of service tax paid by the MSO or not?

12. Whether the appellants are providing branded service or not?

Consequently they are entitled for exemption under Notification No. 6/2005-ST dated 01.03.2005 and Notification No. 33/2012-ST dated 20.06.2012.

In this case, the appellants are cable operator and providing cable services to the subscribers on the basis of signals received from the MSO. The subscriber has not asked for any brand for providing the said services. In fact, the appellant is also not providing any branded service as MSO is supplying signal to the appellants which has been transmitted to the subscribers, in that circumstances, there is no relation of brand name to the ultimate customers. Therefore, we hold that the appellants are not providing any branded service to the subscribers and the said issue has been examined by the Hon'ble Apex Court in the case of RDB Industries (supra) wherein the Hon'ble Apex Court came to the occasion to examine the issue of brand name and observed as under:-

"18. It is obvious that, on the facts of these cases, what is in fact

affixed to the jute bags is the name of the procurer agency in question such as the FCI, the State Government of Punjab and so on, the crop year, the name of the jute mill concerned, its BIS certification number and the statement that the food grains are manufactured in India. It is clear that all the aforesaid markings have, on the pain of penalty, to be done by the manufacturers of the jute bags, given the Jute Control Order and the requisition orders made thereunder. Obviously, such markings are made by compulsion of law, which are meant for identification, monitoring and control by Governmental agencies involved in the PDS. Neither do such markings enhance the value of the jute bags in any manner nor is it the intention of the appellants to so enhance the value of jute bags, which is necessary if Excise duty is to be imposed. This flows from the expression "...for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark...". In the present case, the markings on the jute bags are not for the purpose of indicating a connection in the course of trade between the jute bag and some person using such name or mark. The markings are by compulsion of law only in order that Governmental Authorities involved in the PDS may identify and segregate the aforesaid jute bags. This being the case, it is obvious that there is no "brand name" involved in the facts of the present cases.

22. The facts of these cases are far from the facts in Kohinoor Elastics (supra). In Kohinoor Elastics (supra), it was found that, as a matter of fact, the customer wanted the brand name affixed on the product because he wanted the consumer to know that there is a connection between the product and

him. This is very far from the facts of the present case, in that, as has been held by us above, it is clear that the markings required on the jute bags are compulsory, being required by the Jute Commissioner, and are not for the purpose of enhancing the value of the jute bags by indicating a connection in the course of trade between the aforesaid products and the manufacturer of those products."

Further, in the case of Maheshwari Industries (supra), the Hon'ble Apex Court observed the criteria for use of brand name which is as follows:-

"1) It must be a name or mark such as symbol, monogram, label, signature or invented word or writing;

(2) It must be used in relation to such specified goods, for the

purpose of indicating a connection in the course of trade between such goods and some person using such name or mark, with or without any indication of the identity of that person; and

(3) The mere fact that the specified goods manufactured by a person bear a brand name or trade name of another manufacturer, is not sufficient to conclude that those goods are manufactured by such other manufacturer or trader.

19. Therefore, it is clear that a person may be taken to be manufacturing specified goods, bearing a brand name or trade name only if the name, mark or symbol used as such, is intended to indicate a connection in the course of trade between such specified goods and some person using such mark or name. If the use of the brand name or trade name is not intended for the purpose of indicating a connection in the course of trade between such specified goods and the person using such name or

mark, then the same may not fall within the definition of the expression brand name or trade name under the Explanation under paragraph 5 of the Exemption Notification."

In view of the above cited judicial pronouncements, we hold that the appellants are not providing any branded services, therefore, the appellants are entitled to avail the benefit of exemption Notification No. 6/2005-ST dated 01.03.2005 and Notification No. 33/2012-ST dated 20.06.2012.

b) Whether the extended period of limitation is invokable or not?

We find that the appellants were under bonafide belief that they are not liable to pay service tax as they are entitled for benefit of exemption under notification no. 6/2005-ST dated 01.03.2005 and Notification No.33/2012-ST dated 20.06.2012, therefore, they did not pay service tax.

Moreover, there was confusion in the industry during the relevant period whether the appellants are liable to pay service tax or the MSO liable to pay service tax on their activity, in that circumstances, the benefit of doubt goes in favour of the appellants. Therefore, we hold that the extended period is not invokable as held by the Tribunal in the case of Trans Yamuna Communication Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi – 2017 (52) STR 31 (Tri.-Del.) wherein this Tribunal observed as under:-

"4. I have heard both the sides and perused the appeal records. As noted above, the tax liability is not in dispute. It appear that the scope of activities undertaken by the appellant is not falling under generally understood activities of cable operator who is involved in distribution of television signals to various clients. Admittedly, the television signals received from satellite is managed and handled through various layers of persons/activities till it reaches the ultimate customer. The appellant's role

is as an intermediary and apparently there could be a bona fide belief on their part regarding the tax liability under the said category. As already noted that they are not acting as a local cable TV operator in transmitting signals to the clients. Neither they are involved in receiving satellite signals as a MSO. The Finance Act, 1994 borrows the definitions of Cable operator" and „Cable service" from Cable Television Network (Regulation) Act, 1995. Considering scope of definition under Section 2(aa) of the said Act there is a possibility of bona fide belief for non-tax liability. Considering the ratio followed by the Tribunal in the abovementioned cases and also considering the facts of the present case, I find that it is a fit case for invoking the provision of Section 80 for waiver of penalties imposed on the appellant. Accordingly, the penalties are set aside and the appeal is allowed only to that extent."

Therefore, no penalty is imposable on the appellants.

c) Whether the best judgement under Section 72 of the Finance Act, 1994 has been assessed correctly or not?

In this case, it is a fact on record, the appellants were not given time of supply the data of their activity and assessment has been done on the basis of the data supplied by the MSO which is not correct, therefore, we hold that the assessment under Section 72 of the Finance Act, 1994 is not correct. In that circumstances, the impugned demand is not sustainable, but the appellants are directed to provide the data for their activity within the period of limitation to the adjudicating authority within 30 days of the communication of this order and on the basis of the data supplied by the appellants, the correct service tax liability shall be determined by the adjudicating authority. Therefore, for that purpose, the matters need to be examination at the end of the adjudicating authority.

d) Whether the appellants are liable to pay service tax on the gross value of the services provided by them or not?

We find that in terms of Section 67 of the Finance Act, 1994, the appellants are liable to pay service tax on the gross value of subscription received by them. The said view having the support of the Hon'ble Apex Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd (supra) wherein the Hon'ble Apex Court observed as under:-

"24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service."

Admittedly, in this case, the appellants have received subscriptions from the subscribers for providing the

services, on the said amounts, the appellants are liable to pay service tax.

e) Whether the appellants are entitled for cenvat credit of service tax paid by the MSO or not?

We find that the out of the total amount received by the appellants, some amounts of total subscriptions, the appellants are remitting to the MSO on which the MSO is paying service tax, therefore, the signal provided by the MSO to the appellant is an input services for the appellants.

Therefore, the service tax paid by the MSO is available as cenvat credit to the appellants. In these circumstances, we hold that the appellants are entitled to avail cenvat credit of the service tax paid by the MSO.

13. In view of the above, the following order is passed:-

a) the appellants are entitled for exemption under Notification No. 6/2005-ST dated 01.03.2005 and Notification No. 33/2012-ST dated 20.06.2012.

b) the extended period of limitation is not invokable. Consequently, no penalty is imposable on the appellants.

c) the appellants are liable to pay service tax on the gross value of services received by them and is entitled to avail cenvat credit of service tax paid on the amount remitted to the MSO.

d) The adjudicating authority shall quantify the demand for the period within the period of limitation on production of data of services provided by the appellants of cable services to the subscribers within the 30 days of receipt of this order on which the appellant shall paid the service tax if payable.

12. In view of the above, the appeals are disposed of."

4.4 I find that the above decision is the basis for making the demand against the appellant. It is settled principal in law that a subsequent judgment cannot be a basis for making the demand by invoking extended period. In this decision Tribunal has concluded that extended period of limitation would not be

available for making this demand. Accordingly, I am inclined to hold that extended period of limitation would not be available for making this demand and the demand should be restricted to normal period of limitation..

4.5 With regards to admissibility of Cenvat credit, I do not find any reason to disagree with the findings recorded in the impugned order. The credit have to be allowed strictly as per the provisions of the Cenvat Credit Rules and appellant should have taken the credit within one year from the date of submission of document against which credit has been taken. In the case of Kusum Ingots & Alloys Ltd. (supra) referred by Authorized Representative appearing for revenue, Tribunal have upheld the denial of credit taken beyond the period prescribed by Central Excise Rules, 1944. In the said decision Tribunal has held as follows:-

"12. We find that after the decision of the Hon'ble Supreme Court in the case of Eicher Motors Ltd. v. Union of India (Supra), Sub-Section XXVIII is introduced in Section 37 to provide for Rules which empower the Government to make rules for not allowing credit to be utilised for payment of duty on excisable goods, by Section 131 of Finance Act, 1999. Therefore, after this amendment reliance by the appellants on the decision in the case of Eicher Motors Ltd. v. Union of India will not help them. If a manufacturer wants to avail the benefit of Modvat credit in respect of inputs used in or in relation to the manufacture of final product on payment of duty on such final products under Rule 57A of the Central Excise Rules, he should follow the procedure laid down under the Modvat Scheme. The contention of the appellants is that if on the inputs the manufacturer had already paid the duty on the basis that when the goods are utilised in the manufacture of final product then tax on these goods are to be adjusted and this right accrued to the manufacturer on the date when they paid the tax on the inputs. The right will continue till the facility is available. A manufacturer who is working

under the Modvat Scheme can certainly utilise the credit of the duty paid on the inputs used in or in relation to the manufacture of final product for payment of duty on such final product; but he has to take credit on such inputs within six months from the date of issue of the duty paying documents. After the amendment credit cannot be taken on duty paying documents which are more than 6 months old.

13. In view of the above discussions, we answer the question referred to Larger Bench in the favour of Revenue. Therefore, the view taken in case of Osram Surya Pvt. Ltd. v. Commissioner of Central Excise, Indore, reported in 1998 (29) RLT 684 is the correct view and the contrary view taken in correct.

14. No other issue is involved in the appeals. Therefore, the appeals are being taken up for disposal. The appellants availed the benefit of Modvat credit on documents after six months from the date of their issue. After amendment to Rule 57G of Central Excise Act, the appellants are not entitled to such credit. The appeals are accordingly dismissed."

4.6 I also note that the view taken by the Tribunal have approved by Hon'ble Supreme Court in the case of Osram Surya Pvt. Ltd. [2002 (142) ELT 5 (SC)].

4.7 Hon'ble Allahabad High Court has in case of Rathi Ispat Ltd. [2010 (251) ELT 199 (All)] referred by the Authorized Representative observed as follows:

7. Considered the respective submissions of the learned counsel for the parties and perused the record. Before proceeding further, it would be appropriate to have a glance on Rule 57G(5) of the Central Excise Rules, 1944 as on the date on which the Modvat credit of Rs. 1,15,405/- was taken, which reads as follows :-

"(5) Credit shall also not be taken by the manufacturer after six months of the date of issue of any document specified in sub-rule (3) and where the intermediate products

manufactured by the user of inputs specified under Rule 57J are received by the manufacturer, after nine months.”

8. *The above rule came up for consideration and interpretation before the Apex Court in the case of Osram Surya (P) Ltd. (supra) The validity of the said provision was not under challenge therein. The only controversy raised before the Apex Court was that the rule in question is not applicable in regard to the credits acquired by a manufacturer prior to coming into force of the rule. Disagreeing with the said proposition, the Apex Court observed that a plain reading of the said sub-rule clearly shows that it applies to those cases where a manufacturer is seeking to take the credit after the introduction of the rule and to cases where the manufacturer is seeking to do so after a period of six months from the date when the manufacturer received the inputs. It was held that the said sub-rule operates prospectively in regard to those manufacturers who seek to take credit after coming into force of the rule. Agreeing with the Tribunal, the Apex Court has observed as follows :-*

“Therefore, in our opinion, the Tribunal was justified in holding that the rule in question only restricts a right of manufacturer to take the credit beyond the stipulated period of six months under the rule.”

9. *The ratio of the above judgment is that the said sub-rule is in the nature of period of limitation restricting the right of manufacturer to take the credit within the specified period of limitation and beyond the period of limitation, the benefit of said rule cannot be availed of by the manufacturer.*

10. *Having said as above, we may consider certain salutary principles regarding the principle of limitation, to test the argument of the applicants.*

11. *The law of limitation is based on delay and laches. It does not bar the right but the remedy. One of the most important and universal rules (which is not, however, without exception in English law) is that time, when it has once commenced to run in any case will not cease to do so by*

reason of any subsequent event which may be within the saving of the statute. Of this there is a well-known instance drawn from the time of the English civil wars. In answer to a plea of the statute, the plaintiff replied that a civil war had broken out, and the Government was usurped by certain traitors and rebels, which hindered the course of justice, and by which the courts were shut upon and that within six years after the war ended he commenced his action and yet his replication was held to be bad.

12. The law of limitation is not one of substance but of procedure. The object of prescribing limitation is to put an end to litigation, or to state it in other words, litigation may attain a finality.

13. The other principle of interpretation while dealing with the provisions of a fiscal statute is that a fiscal statute should be read as it is without adding or subtracting any word. There is no equity about the tax and equitable considerations are not relevant in interpreting the provisions of taxing statute. But the tax laws are to be interpreted reasonably and in consonance with justice. It is said that equity and taxation are often strangers, attempts should be made that these do not remain always so and if construction results in equity rather than in injustice, then such construction should be preferred to the literal construction. [(See CIT v. J.H. Gotla (1985) 156 ITR 323 (S.C.)]

14. Keeping the above principles of interpretation of law, on a plain reading of relevant sub-rule (5) of Rule 57G would show that it admits no exception whatsoever for consideration of any claim of Modvat credit after the expiry of period of six months from the date of the commencement of the period of limitation.

15. Apart from the above, keeping in view the salutary principle applicable to the provisions dealing with the limitation that once the period of limitation has began, no subsequent event can stop it, the argument of the applicant is liable to be rejected.

16. *Though in a slightly different context the Apex Court while interpreting Section 11A of Central Excise and Salt Act has observed that:-*

"Limitation period should not be stretched more than the elasticity supplied in the Section itself. So, the eventuality envisaged in S. 11A for the further lengthening of the limitation period must be strictly construed."

17. *In Gurusahai Saigal v. Commissioner of Income Tax, Punjab, AIR 1963 SC 1062, a case under the Income-tax Act, the Apex Court while construing the relevant provision of the Act has held that the proper way to deal with such a provision is to give it an interpretation which, to use the words of the Privy Council in Mahaliram Ramjidas's case, AIR 1940 PC 124, "makes the machinery workable, ut res valeat potius quam pereat."*

18. *Reference was made by the learned counsel for the applicant to the case of Commissioner of C.EX., Jaipur v. Parasrampuriah Synthetics Ltd., 2000 (116) E.L.T. 581 (Tribunal) wherein it has been held that the bar created by the amended rule would have no application when the initial credit was taken within the prescribed period and the additional or the differential credit being taken after the prescribed period of six months. The said judgment of the Tribunal is of no avail to the applicant for the reasons more than one. Firstly, no principle of law has been discussed therein and secondly, the Tribunal had not the advantage of the authoritative pronouncement of the Apex Court in the case of Osram Surya (P) Ltd. (supra) which came into existence subsequently.*

4.8 Thus, I am not inclined to allow the benefit of Cenvat credit availed in respect of the documents which admissibly are more than one year beyond one year from the date of their issuance as it goes contrary to Rule 4 of Cenvat Credit Rules.

4.9 As I find that extended period of limitation could not have been invoked in this matter, therefore, penalties imposed under Section 78 is also set aside.

4.9 In view of above observations, matter is remanded back to the Original Authority for re-quantification of demand for normal period.

5.1 Appeals are partly allowed and matter remanded to original authority for re-quantification of demand for normal period.

5.2 As matter is quite old matter to be disposed off in remand proceedings within three month of receipt of this order.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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