IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/70531/2018-EX[SM]

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1424-17-18 dated 22/11/2017 passed by Commissioner (Appeals) Central Excise, Noida)

M/s Shimbhaoli Sugar Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Rajesh Chhibber (Adv) for Appellant
Shri Gyanendra Kumar Tripathi, Asstt. Commr. (AR), for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 13/07/2018
Date of Decision : 13/07/2018

FINAL ORDER NO.71534/2018

Per: Anil G. Shakkarwar

The present appeal is arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1424-17-18 dated 22/11/2017 passed by Commissioner (Appeals) Central Excise, Noida.

2. The brief facts of the case are that the appellants were manufacturing Sugar and Molasses and were availing facilities of Cenvat credit. It came to the notice of Revenue that appellant availed Cenvat credit of service tax paid through supplementary invoices to the tune of

Rs.13,58,948/- and the said invoices were issued prior to 01.04.2011 and it appeared to Revenue that before 01.04.2011 there was no provision in Cenvat Credit Rules for availment of Cenvat credit on supplementary invoices. Therefore, a show cause notice dated 13.08.2015 was issued proposing demand against the appellant, which was confirmed through Order-in-Original dated 21.03.2017. Learned Commissioner (Appeals) did not interfere with the confirmation of said demand. Therefore, appellant is before this Tribunal.

3. Heard the Learned Counsel for appellant. He has submitted that the issue herein is no more res-integra in view of the decision of this Tribunal in the case of M/s Delphi Automotive Systems (P) LTD. Vs Commissioner of Central Excise, Noida reported at 2016 (46) S.T.R. 369 (Tri. –Del.) dated 25.09.2013. He has further submitted that this Tribunal in the said case has held that restriction on availment of Cenvat credit paid under supplementary invoices was introduced w.e.f. 01.04.2011 in respect of service tax.

4. Heard Learned A.R. for Revenue who has supported the impugned order-in-appeal.

5. Having considered the rival contentions and on perusal of record, I find that the only objection raised by Revenue is that the supplementary invoices were issued prior to 01.04.2011 and therefore, in the opinion of Revenue, Cenvat credit of service tax paid through supplementary invoice was

not admissible to the appellant. I find through the findings of this Tribunal in the above stated case that Rule 9(1) (bb) of Cenvat Credit Rules does not have any retrospective effect. Therefore, in respect of supplementary invoices which were issued before 01.04.2011 there is no restriction on availment of Cenvat Credit.

6. I, therefore, set aside the impugned order and allow the appeal filed by the appellant.

(Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Nihal/akp