

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

APPEAL No. E/70107/2016-EX[DB]

(Arising out of Order-in-Appeal No.409-CE/APPL-LKO/LKO/2015 dated 20/10/2015 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

M/s Scooter India Ltd. **Appellant**

Vs.

**Commissioner of Central Excise
& Service Tax, Lucknow** **Respondent**

Appearance:

Absent on Call
Shri Pawan Kumar Singh (Supdt.) AR

for Appellant
for Respondent

CORAM:

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing : 29/11/2018
Date of Decision & Pronouncement : 12/12/2018

FINAL ORDER NO. - **72853/2018**

Per: Archana Wadhwa

On matter being called neither anybody appeared nor is there any adjournment request. Accordingly we have heard learned A.R. for the Revenue and have gone through the impugned order.

2. The appellant is engaged in the manufacture and clearance of motor vehicles & parts and is duly registered with the Service Tax Department. They are also availing Cenvat credit facilities in respect of various Cenvatable services received by them.

3. As per audit objection, they were issued a show cause notice proposing to deny the Cenvat credit of Rs.1,09,856/- availed by them during the period August, 2008 to March, 2013, on the basis of invoices issued by one M/s Abhay Kumar Awasthi, for deployment of drivers under "Man Power Supply Service". The said proposal was on the ground that the invoices issued by M/s Abhay Kumar Awasthi did not reflect the name of the appellant and as such cannot be held to be appropriate invoices for the purpose of availment of credit. Further the notice issued to them also proposed confirmation of interest of Rs.24,532/- in respect of the differential duty deposited by the appellant during the period August, 2008 to December, 2013 on account of the differential assessable value from their factory gate and the depots.

4. The notices issued to the appellant were contested on merits as also on limitation. It was contented by the appellant that there is no dispute with the services

availed from the service provider were utilized by them, by reflecting the same in their accounts. As such, the lapse of non mentioning of the assessee's name was an inadvertent mistake. As regards interest they submitted that they had cleared their goods from their factory gate on payment of duty to their depots and the differential duty which arises on further sales from the depots on higher value has already been paid by them, in which case interest liability cannot be fixed against them.

5. The appellant also contested the demand on limitation by submitting that the entire facts being reflected in their statutory records in which case no *mala fide* can be attributed to them so as to invoke the longer period of limitation.

6. The Lower Authorities did not find favour with the above contention of the appellant and confirmed the demand alongwith imposition of penalties. The order passed by the Original Adjudicating Authority was upheld by Commissioner (Appeals). Hence the present appeal.

7. On going through the records, we note that the dispute relates to the denial of credit of Rs.1,09,856/- on

the ground that the appellant's name has not been mentioned in the invoices. On the other hand the appellants have strongly contended that the receipt of the services from M/s Abhay Kumar Awasthi was duly reflected in their books of accounts and the show cause notice does not dispute that the appellants have received such invoiced services and have utilized the same for manufacture of their final product. By referring to various decisions they have contended that such technical lapse cannot be held to be a reason for denial of the credit.

8. We find favour with the above contention of the appellant. Though the Lower Authorities have observed that the appellants have not proved beyond doubt the receipt of the services but appreciating the assessee's stand that the same stand reflected in their books of account and there being no objection to that effect in the show cause notice, it has to be held that appellant was entitled to avail said credit.

9. Apart from that, we also note that demand is barred by limitation inasmuch as the appellants were regularly filing returns and were reflecting the said credit in which case demand raised beyond the normal period has to be

held as barred by limitation. Accordingly, we set aside the demand confirmed on the said count.

As regards interest, the Lower Authorities have observed that the same is payable in the light of various decisions. Reliance stand made to the Hon'ble Supreme Court decision in the case of CCE, Pune vs. M/s SKF India Ltd. 2009 (239) E.L.T. 385 (SC) as also the other decisions of Bombay, Gujarat and Madras High Courts.

10. As the said interest is in respect of the differential duty paid by the appellant in respect of price escalation and in terms of various decisions is required to be paid. However, as per the settled law the limitation aspect would be applicable to the interest demand also. However, invoice date on which differential duty was paid by the assessee is not available, we deem it fit to remand the said aspect to the Original Adjudicating Authority for deciding on the limitation.

11. As regards penalty, we have already held in favour of the assessee in respect of Cenvat credit and the payment of interest on the differential duty being a technical issue when all the aspects were known to the Revenue, no *mala fide* can be attributed to them so as to

invoke penal provisions. Accordingly penalty is set aside
in toto.

12. Appeal is disposed of in above manner.

(Pronounced in Court on- 12/12/2018)

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

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks