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

APPEAL No.E/70071/2016-EX[DB]

(Arising out of Order-in-Original No. 11/HAPUR/2015-16 dated 27/10/2015 passed by Commissioner of Customs, Central Excise & Service Tax, Hapur)

M/s Triveni Engineering & Industries Ltd. **Appellant**

Vs.

Commissioner of Central Excise & S.T., Meerut-i **Respondent**

<u>Appearance:</u>

Shri R. Krishnan, Advocate for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

<u>CORAM:</u>

Hon'ble Justice Shri Dilip Gupta, President
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 15/10/2018
Date of Decision : 15/10/2018

FINAL ORDER NO-**70696 / 2019**

Per: Anil G. Shakkarwa

Present appeal is directed against Order-in-Original No. 11/HAPUR/2015-16 dated 27/10/2015 passed by Commissioner of Customs, Central Excise & Service Tax, Hapur.

2. Brief facts of the case are that appellants were manufacturer of Sugar and Molasses. Appellant availed Cenvat credit of duty paid on various steel items on

01.07.2009 such as HR Sheets, Mill Plates, Angles, M.S. Channels, M.S. Beams, Joists/Joints etc. The said items were used for fabrication of support structures for various parts of sugar machinery as well as they were used in foundation for machinery. The total credit availed on said items on 01.07.2009 was Rs.93,95,889/-. Appellant further availed credit of duty paid on steel items used for fabrication of various capital goods such as molasses tank etc. from June, 2010 to September, 2013. Audit of the accounts of appellant were conducted in the month of June, 2010 for the period from July, 2009 to June, 2010. After receipt of audit report by the Jurisdictional Range Superintendent, the said Range Superintendent initiated enquiry. The appellant submitted their contention to the said Range Superintendent on the audit objection raised in respect of availment of Cenvat credit to the tune of Rs.81,34,842/- during the month of July, 2009 and Rs.5,81,261/- during the month of June, 2010 through their letter dated 05.06.2011. Further, revenue also scrutinized the ER-1 return filed by the appellant for the month of July, 2009 and on the basis of said scrutiny and some statements recorded, revenue issued show cause notice dated 31.07.2014 to the appellant by invoking extended period of limitation calling upon the appellant to show cause as to why allegedly irregularly availed Cenvat credit amounting to Rs.1,02,29,033/- availed during the period from July, 2009 to September, 2013 should not be recovered under extended period of limitation. The appellant submitted before the Original Adjudicating Authority that the demand raised through the show cause notice dated 31.07.2014 by making allegations of suppression of the fact cannot be raised on the basis of audit observation and further contended that suppression of fact on account of appellant with intention to evade payment of duty cannot be established by revenue since the facts were in the knowledge of the Department since July, 2009 through relied upon ER-1 return and show cause notice should have been issued within one year from filing of said ER-1 return. Further, appellant also contested the demand on merit before the Original authority. The Original authority did not appreciate the grounds of defence and confirmed the demand and imposed equal penalty. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned Advocate Shri R. Krishnan on behalf of the appellant. He has submitted that audit was conducted in the month of June, 2010 and appellant on 05.06.2011 submitted their contentions about the objection raised on admissibility of Cenvat credit of Central Excise duty paid on items used for fabrication of various parts and components including molasses tank for the period after June, 2010 and for fabrication of support structures for various parts of sugar machinery as well as used in the foundation for machinery before 01.07.2009. He has further submitted that the

appellant had disclosed credit taken on 01.07.2009 to the tune of Rs.93,95,889/- in the monthly ER-1 return filed for the month of July, 2009 which is relied upon by revenue for issue of impugned show cause notice. He has further submitted that everything was disclosed to revenue and revenue has knowledge of all the transactions as early as 05.06.2011. However, they have issued show cause notice on 31.07.2014 by invoking the extended period of limitation. He has further submitted that the said show cause notice is not sustainable on limitation as ruled by Hon'ble Allahabad High Court in the case of Commissioner of Central Excise and Service Tax Vs Triveni Engineering and Industries Ltd. reported as 2015 (317) ELT 408 (All.). He further elaborated that in their own case Hon'ble Allahabad High Court had ruled that show cause notice issued after a gap of 22 months after an audit was conducted by invoking the extended period of limitation, is not sustainable. He further submitted that in the present case reply to the audit objection was filed by the appellant on 05.06.2011 and after 36 months show cause notice by invoking the extended period was issued by revenue and the same is not sustainable.

4. Heard the learned A.R. Shri Mohammad Altaf, Assistant Commissioner on behalf of revenue who has supported the impugned order.

5. Having considered the rival submissions and on perusal of record, we note that impugned show cause notice was issue after a gap of 36 months, after the audit was conducted by invoking the provisions of Sub-section (4) of Section 11A which are paramateria to proviso to Sub-section (1) of Section 11A of Central Excise Act, 1944. We note that under similar circumstances, when a show cause notice was issued after a gap of 22 months after the audit was conducted in appellants own case by invoking the extended period of limitation the jurisdictional High Court had found such show cause notice to be unsustainable. We, therefore, hold that the impugned show cause notice is not sustainable.

6. As a result, the impugned Order-in-Original is not sustainable. We, therefore, set aside the impugned order and allow the appeal.

(Operative part of the order was pronounced in Court)

(Justice Dilip Gupta)
(President)

(Anil G. Shakkarwar)
Member (Technical)

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