CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70939 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-1441 & 1442-17-18 dated 29/11/2017 passed by Commissioner (Appeals), Central Tax, Noida)

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

(Simbhaoli, Distt. Hapur, U.P.)

VERSUS

Commissioner, Central Excise, Noida **.....Respondent**

(CCE, Noida)

APPEARANCE:

Shri Rajesh Chibber, Advocate for Appellant
Shri Anupam Kumar Tiwari, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO. 70071 / 2020

DATE OF HEARING: 29 October, 2019
DATE OF PRONOUNCEMENT: 01 January, 2020

ARCHANA WADHWA

After hearing both the sides duly represented by Shri Rajesh Chibber, learned advocate appearing on behalf of the appellants and Shri Anupam Kumar Tiwari, learned A.R. appearing on behalf of the Revenue, I find that the appellant is engaged in the manufacture of sugar and were availing the benefit of cenvat credit of duty paid on inputs and on capital goods.

2. As a result of an audit conducted in their factory in April 2013, certain objections were raised to the effect that credit of Rs.96,648/- was claimed on the basis of photocopies, credit of Rs.15,138/- was in respect of inadmissible input/capital

goods and there was an excess availment of credit to the extent of Rs.4,309/-.

3. On the basis of audit objection, show cause notice was issued on 22 July, 2015. The appellant produced the original invoice as also contended that submersible pumps, superior metal pack etc. were used for repair of the capital goods and as such were cenvatable. As regards Rs.4,309/-, the appellant admitted that there was excess availment on account of inadvertent mistake by the dealing hand. However, the Lower Authorities confirmed the entire credit of Rs.1,16,095/- as also imposed penalty of identical amount. Hence the present appeal.

4. Apart from the merits of the case, I find that the audit was conducted in April 2013 whereas the show cause notice was issued on 22 July, 2015 i.e. more than 2 years from the date of audit. The Hon'ble Allahabad High Court in the case of Commr. Of C. EX. & Service Tax V/s Triveni Engineering & Industries Ltd. reported at 2015 (317) E.L.T. 408 (All.), has held that show cause notice issued after a gap of 22 months from the date of the audit is clearly barred by limitation in terms of proviso to Section 11A of the Central Excise Act. By applying the ratio of the said decision to the facts of the present case, it has to be held that the notice issued after more than 2.5 years from the date of the audit is barred by limitation. As such, without going into the merits of the case, I hold that the impugned orders are not sustainable on the ground of time bar itself. Accordingly the same are set aside and appeal is allowed with consequential relief.

(Order Pronounced in the open Court on 08/01/2020)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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