CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/20007/2018-SM

[Arising out of Order-in-Appeal No. BW-EXCUS-000-APP-038-17-18 dated 10/10/2017 passed by the Commissioner of Central Tax, Mysore (Appeals)]

Hindustan Coca Cola Beverages Pvt. Ltd.
Plot No. 18, Bidadi Indl. Area
Ramanagaram Taluk, Bidadi
Bangalore Rural – 562 109
Karnataka

Appellant(s)

Versus

Commissioner of Central Tax, Bangalore West
BMTC Building
Banashankari II Stage
Bangalore - 560 070
Karnataka

Respondent(s)

Appearance:

Shri. G. Shivadass, Advocate	For the Appellant
Shri Madhup Sharan, Assistant Commissioner (AR)	For the Respondent

Date of Hearing: 01/08/2018
Date of Decision: 15/10/2018

CORAM:

HON'BLE MR. P DINESHA, JUDICIAL MEMBER

Final Order No. 21665 / 2018

Per: P DINESHA

This appeal is filed by the assessee challenging the order of Commissioner of Central GST and Central Excise, Mysore, dated

10.10.2017 wherein, the Commissioner (Appeals) has rejected the assessee's appeal and confirmed the demand of alleged irregular credit availed, along with applicable interest and penalty. When the matter came up for hearing Shri G. Shivadass, Advocate appeared for the assessee and Shri. Madhup Sharan, learned DR appeared for the Revenue, heard rival contentions, perused the documents placed in the appeal record and have also gone through various decisions referred to during the course of hearing.

2. A show-cause notice dated 24.07.2015 was issued by the Revenue alleging that the appellant had availed cenvat credit on the strength of some invoices issued by the suppliers of inputs and by the provider of taxable services and that the appellant's claim in availing cenvat credit was on the basis of invoices issued prior to six months from the date on which the credit was taken. This, according to the adjudicating authority being contrary to Rule 4(1) of the Cenvat Credit Rules, he proposed to deny such cenvat credit availed, which worked out to Rs. 13,79,402/- (Rupees Thirteen Lakhs Seventy Nine Thousand Four Hundred and Two only). Order-in-Original came to be passed on 04.03.2016 wherein the adjudicating authority has confirmed the proposals made in the show-cause notice and the same was upheld by the impugned Order-in-Appeal by the Commissioner (Appeals). The denial is basically on the ground that Notification No. 21/2014-CE dated 11.07.2014 amended Rule 4 by inserting a proviso after the second proviso in sub rule (7) which read as under:

> *"….Provided also that the manufacturer or the provider of output service shall not take cenvat credit after six months of*

the date of issue of any of the documents specified in sub-rule (1) of rule 9."

This was interpreted by the adjudicating authority to say that the said amendment "effectively stipulated that manufacturer or the provider of output service shall not take credit under 'input' as well as 'input service' after six months of the date of issue of any of the documents specified in sub-rule (1) of Rule 9". The above interpretation has been further elaborated by the adjudicating authority himself at page 2 paragraph 4 of his order. On appeal by the assessee, the Commissioner (Appeals) has simply upheld the aforesaid interpretation drawn by the adjudicating authority while only observing that the appellant's argument to the effect that the invoices based on which cenvat credit was availed were issued prior to 01.09.2014 and therefore the amendment brought in w.e.f. 01.09.2014 vide Notification No. 21/2014 (supra) was not applicable.

2.1. Admitted position is that no rejection is made on the basis of invalidity or illegality of any invoice, i.e., no invoice against which cenvat credit was claimed is thrown out as irregular or illegal or wrong. CBEC has come out with another Notification No. 06/2015 dated 01.03.2015 wherein, Rule 4(7) (supra) has been further amended, to the effect that 'six months' is replaced by 'one year'. As indicated above, it is not the case of the Revenue that the invoices were ineligible/irregular under Rule 9(1) and that these invoices were issued, as could be seen from the very annexure to the Order-in-Original, in 2014, i.e., between 07.02.2014 and 13.04.2014; the credit against which are taken, as is appearing from the very same annexure, are in September, October and November 2014. Further, there is also no finding that either there was no supply of input or input service against these invoices by the Revenue authorities. It is also an admitted position of law that prior to 01.09.2014 there was no time limit prescribed to avail cenvat credit. In the light of above facts, it can be safely assumed that the amendment would apply to invoices raised on or after the said date of amendment. In the light of the later amendment vide Notification No. 06/2015, the period of six months has been extended to one year and if the Notification 21/2014 (supra) were to operate retrospectively, then the same effect would have been provided to the Notification No. 06/2015 as well.

2.2 The Mumbai Bench of the Tribunal has decided a similar issue, in the case of ***M/s. Mercedes Benz India Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Pune-I reported in [2018-TIOL-2455-CESTAT-MUM***] wherein after considering the pleadings, the Bench has concluded as under :"

> *"6. The short issue involved in the present appeal is whether there is delay in availing the credit on the invoices/challan beyond the period prescribed under Rule 4(7) of CENVAT Credit Rules, 2004. I find that the invoices have been issued during May, 2014 to July, 2014 and credit was availed within one year from the date of issue of the documents, hence fall within the time limit prescribed by the* ***Notification No. 6/15-CE (NT)*** *dated 1.3.2015.*
> *7. In the result, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant."*

3. I am therefore of the considered opinion that in view of my above observations in the light of the facts of this case and findings

of the Mumbai Bench in the case of *M/s. Mercedes Benz India Pvt. Ltd. (supra)*, the Revenue authorities have erred in denying the benefit of cenvat credit on inputs and input services for which reason, I set aside the impugned order. Consequently, I allow the appeal with consequential benefits, if any.

(Order Pronounced in Open Court on **15/10/2018**)

(P. DINESHA)
JUDICIAL MEMBER

...iss/sdd