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

Appeal(s) Involved:

E/20973/2018-SM

[Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-333-2017-18 dated 21/03/2018 passed by Commissioner of Central Tax, BELGAUM (APPEALS)]

M/s. Kirloskar Ferrous Industries Ltd.
Bevinahalli Village Hitnal Post
KOPPAL - 583234
KARNATAKA

Appellant(s)

Versus

Commissioner Of Central Tax And Central Excise, Belgaum
N0.71, Club Road,
Belgaum - 590001
Karnataka

Respondent(s)

Appearance:

Mr. M.S. NAGARAJA, ADV
M/S. T.RAJESWARA SASTRY & ASSOCIATES, NO.48, 11TH MAIN ROAD, BANASHANKARI II STAGE, BANGALORE 560070

For the Appellant

Mrs. Kavitha Podwal, Superintendent (AR)

For the Respondent

Date of Hearing: 31/10/2018
Date of Decision: 31/10/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 21696 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 21.3.2018 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of pig iron and unmachined casting falling under Chapter 72 and 73 of the Central Excise Tariff Act, 1985 and are availing CENVAT credit under the CENVAT Credit Rules, 2004. During the audit of the records of the appellant, it was noticed that they have failed to reversed the CENVAT credit attributable on the value of written off inputs, spares and capital goods in their accounts for the financial year 2009-10. Accordingly, a show-cause notice dated 20.3.2015 was issued to the appellant demanding CENVAT credit of Rs.10,23,603/- along with interest and penalty. After following the due process, the Additional Commissioner vide Order-in-Original dated 1.12.2016 confirmed the demand of Rs.10,23,603/- along with interest and also imposed equal penalty. Aggrieved by the said order, appellant filed appeal before the Commissioner (A) on the ground that the inventory was partially written off during the year 2009-10 and the obligation to reverse CENVAT credit in case of partial written off of inputs and capital goods came into existence w.e.f 1.3.2011 and not prior to the said date. But the Commissioner (A) rejected the appeal by ignoring the defence of the appellant. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same is contrary to the facts and the law. He further submitted that there was provision for partial write off during the year 2009-10 and there was no obligation to reverse CENVAT credit in case of partial write off of inputs and capital goods during the relevant period and the provision came into force w.e.f 1.3.2011. He further submitted that the findings in the impugned order are contrary to the documents on record whereby it is established that there is only a partial provision to write off. In support of his submissions, the learned counsel relied upon the decision rendered in the case of ***Sanghavi Engineering vs. CCE, Hyderabad: 2013 (293) ELT 277 (Tri.-Bang.)***. The learned counsel also submitted that the entire demand is barred by limitation. He further submitted that the audit was conducted on 31.1.2010 for the year 2009-10 and the show-cause notice was issued on 20.3.2015 which is beyond the limitation period. He further submitted that there was no suppression on the part of the appellant because from the beginning the appellant has clarified its stand by writing various letters during the year 2011 itself but no show-cause notice was issued for about five years. Learned counsel submitted that the

department has not produced any material on record to show that there was suppression on the part of the appellant with intention to evade payment of duty.

5. After considering the submission of both the parties and perusal of the material on record, I find that from the show-cause notice itself, it is clear that there was no provision for full write off of inputs and capital goods. The audit party raised the objection that the appellant has made a provision for write off of the inputs and capital goods and demanded the reversal of the same. In reply to the audit note, the appellant had written letters dated 24.4.2011; 25.11.2011 and 8.7.2013 whereby the appellant has clarified that the provisions to write off was partially made. I find that this provision to reverse the proportionate CENVAT credit on partially write off came into existence from 1.3.2011 whereas the period involved in the present case is 2009-10. I find that the inventory against which the partial write off was made was available with the appellant and there was no physical removal of the goods. In reply to the show-cause notice also, the appellant has given a detailed chart showing that there was partial write off. Further, I find that the Tribunal in the case of ***Sanghavi Engineering*** cited supra has held that prior to

1.3.2011, a manufacturer of final product who availed CENVAT credit on inputs was not required to reverse any part of that credit on the ground of a part of the value of inputs being written off in the books of accounts. The amendment w.e.f 1.3.2011 was not retrospective and it was prospective. Therefore, by following the ratio of ***Sanghi Eng.*** cited supra, I am of the view that the impugned order is not sustainable in law on merit as well as on limitation. Therefore, I set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **31/10/2018**)

S.S GARG
JUDICIAL MEMBER

Rv...