

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

Appeal(s) Involved:

E/20030/2018-SM

[Arising out of Order-in-Appeal No. 343-2017-CT dated
19/10/2017 passed by the Commissioner of Central Tax,
North West Commissionerate, Bangalore-I (Appeals)]

P R Kedarnath Multi Components

10, 7th Main Road,
Sreeghandadakavalu, Sunkadakatte
Viswaneedam Post,
Bengaluru - 560 091
Karnataka

Appellant(s)

Versus

**Commissioner of Central Tax,
Bengaluru North West**

2nd Floor, South Wing,
BMTc Complex
Shivaji Nagar
Bengaluru - 560 051
Karnataka

Respondent(s)

Appearance:

Shri. M.S. Srinivasa, Advocate
#999/30, 'Nithya Mansion', 1st Floor,
1st Main, 4th Cross, Vijayanagar,
Bangalore - 560 040

For the Appellant

Smt. Kavita Podwal, Superintendent
(AR)

For the Respondent

Date of Hearing: 29/11/2018

Date of Decision: 05/12/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 21849 / 2018

Per: S.S GARG

The present appeal is directed against the impugned order dated 19.10.2017 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant. Briefly the facts of the present case are that the appellants M/s. P.R. Kedarnath Multi Components, are holders of Central Excise Registration No. AADFP8244NXM001/AADFP8244NXM002 for the manufacture of excisable goods viz. "Auto Turned Components" falling under Chapter 8413.99 of the Central Excise Act, 1985. During the course of Audit, it was noticed that the appellants in their Balance Sheet as on 31.03.2005 have availed Cenvat Credit of Rs. 1,24,658/- (Rupees One Lakh Twenty Four Thousand Six Hundred and Fifty Eight only) being 50% of the Cenvat Credit availed on such Capital Goods and also have simultaneously availed the benefit of depreciation under the Income Tax Act on the same Capital Goods valued at Rs. 18,00,438/- (Rupees Eighteen Lakhs Four Hundred and Thirty Eight only). Similarly for the period ending 31.03.2004 an amount of Rs. 1,10,465/- (Rupees One Lakh Ten Thousand Four Hundred and Sixty Five only) being the balance of 50% of the Cenvat Credit availed on such Capital Goods of the earlier year, but depreciation benefit was simultaneously availed under the Income Tax Act. Thus, it appeared that the appellants have contravened the provisions of Rule 4(4) of Cenvat Credit Rules, 2002 and have suppressed the fact of such irregular Cenvat Credit with an intention to avail double benefit under the Central Excise Act and the Income Tax Act, thus attracting the extended provisions under proviso to

Section 11A of the Central Excise Act, 1944. On these allegation, a show-cause notice dated 11.09.2006 followed by the Corrigendum to show-cause notice dated 20.07.2016 was issued to the appellant demanding an amount of Rs. 2,35,123/- (Rupees Two Lakhs Thirty Five Thousand One Hundred and Twenty Three only) along with interest and penalty. After following the due process, the adjudicating authority confirmed the demand of Rs. 2,35,123/- (Rupees Two Lakhs Thirty Five Thousand One Hundred and Twenty Three only) along with interest under Section 11A/11AA of Central Excise Act 1944 and imposed penalty of Rs. 2,35,123/- as per Section 11AC of the Central Excise Act 1944. Aggrieved by the said order, appellant filed appeal before the Commissioner who rejected the same.

2. Heard both the parties and perused the records.

3. The learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that on merit, the appellant has no case but the entire demand in the impugned order is barred by limitation. He further submitted that the stand taken by the appellant at the material point of time i.e between 2002-03 and 2005-06 was fully in tune with the legal position enunciated by the Tribunal till the same was reversed in 2010 by the Hon'ble High Court as reported in **2010 (253) E.L.T. 369 (Kar.)** in the case of **CCE & ST, Bangalore Vs. Suprajit Engineering Ltd.** He further submitted that no malafide can be attributed to the appellant as he was having a bona fide belief duly supported by the

decision of the Hon'ble Tribunal and therefore alleging suppression with intent to evade payment of duty is not warranted invoking extended period of limitation. He also submitted that the entire demand being beyond normal period and during the relevant period there was divergent views by the Tribunal on the same issue, therefore invoking the extended period in terms of proviso to Section 11A(1) of the Act is not tenable under law. In support of this submission, he relied upon the decision of the Apex Court in the case of ***Jaiprakash Industries Ltd. Vs. CCE, Chandigarh reported in 2002 (146) E.L.T. 481 (S.C)***. He also submitted that in the present case there is an inordinate delay of 10 years in adjudicating the show-cause notice which is not permissible in law and the same is liable to be set aside on this ground alone. He further submitted that transfer of show-cause notice in the present case by keeping the proceedings in abeyance by transfer to call book is contrary to the statutory provision and in support of this submission, he relied upon the judgment of the Hon'ble High Court of Gujarat in the case of ***Siddhi Vinayak Syntex Pvt. Ltd. reported in 2017 (352) E.L.T. 455 (Guj.)***.

4. On the other hand the learned AR defended the impugned order.

5. After considering the submissions of both the parties and perusal of the material on record, I find that on merit the appellant has no case in view of the judgment of the Karnataka High Court in the case of ***Suprajit Engineering reported in 2010 (253) E.L.T. 368 (Kar.)***. Further I find that in the present case, the entire demand is beyond limitation because in

the present case the demand for recovery of credit availed during financial year ending 31.03.2004 and 31.03.2005 were made in the show-cause notice dated September 2016 is fully barred by limitation because there was no malafide intention as the appellant had a favourable case decided by the Tribunal in his favour which supported the stand of the appellant. Further I find that the appellant had a bona fide belief supported by the decision of the Tribunal during the relevant time that he is entitled to take the cenvat credit as well as the depreciation but since the judgment was reversed by the Hon'ble High Court but during that period the judgment of the Tribunal was in force and therefore no suppression with intent to evade payment of duty can be alleged against the appellant. In this regard, the appellant has relied upon the following decisions:

- a. Sterlite Industries (I) Ltd. - 1998 (103) E.L.T. 391 (T)*
- b. Aldowin & Others - 2003 (156) E.L.T. 254 (T)*
- c. Refco Icematic Co. Vs. CCE - 1999 (105) E.L.T. 247 (T)*
- d. New Vikram Cement - 1998 (104) E.L.T. 66 (T)*

In view of the decisions cited supra, I am of the considered view that the entire demand in the present case is barred by limitation and therefore I set aside the impugned order by relying on the ratios of the decisions cited supra.

(Order was pronounced in Open Court on **05/12/2018**)

(S.S GARG)
JUDICIAL MEMBER

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