

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

**DIVISION BENCH
COURT NO. I**

APPEAL NOS. E/2461/2007 & E/1717/2009-Ex[DB]

[Arising out of Order-in-Original Nos. 56/CE/CHD/2007 dt. 31.05.2007 and 27/CE/CHD/2009 dt. 09.03.2009 both passed by the Commissioner of Central Excise, Chandigarh]

M/s ACC Limited : **Appellant(s)**

VS

CCE, Chandigarh : **Respondent(s)**

Appearance:

Present for the Appellant(s): Mr. U.A. Rana, Advocate and
Mr. Himanshu Mehta, Advocate

Present for the Respondent(s): Mr. G.M. Sharma, A.R.

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Hon'ble Mr. Bijay Kumar, Member (Technical)

Date of hearing/decision: 07.12.2018

FINAL ORDER NO. 63596-63597/2018

Per Ashok Jindal :

The appellant is in appeal against the impugned orders, wherein the Cenvat credit availed by the appellant on capital goods has been denied by the authorities below on the ground that the appellant has opted for exemption under Notification No. 50/2003-CE dt. 10.06.2003 w.e.f. 3rd May, 2005.

2. The facts of the case are that the appellant is the manufacture of cement and clinkers and is located in Bilaspur, Himachal Pradesh. The appellant filed a declaration on 07.03.2005 for substantial expansion undertaken in the plant and desired to avail the benefit of exemption

under Notification No. 50/2003 *ibid.* Later on, vide letter dt. 02.05.2005, it is intimated that the appellant shall commence the commercial production of cement from expanded capacity of cement manufacture from 03.05.2005, but the appellant continue to avail the Cenvat credit on capital goods installed in their factory after availing benefit of exemption under Notification 50/2003 *ibid*; therefore, various show cause notices were issued to the appellant to deny the Cenvat credit availed on capital goods as the appellant had availed the benefit of exemption under Notification No. 50/2003 *ibid.* The matters were adjudicated and the Cenvat credit was denied. Aggrieved from the said orders, the appellant is before us.

3. The Ld. Counsel for the appellant submits that till 02.05.2005, the appellant was not availing the exemption under Notification No. 50/2003 *ibid*; therefore, from the period prior to 03.05.2005, the appellant is entitled to avail the Cenvat credit.

4. With regard to post 02.05.2005, it is the contention of the Ld. Counsel that they have intimated to the Department about availment of the Cenvat credit on capital goods; therefore, the show cause notices issued to the appellant are barred by limitation as the show cause notices have been issued on 04.05.2006 and 12.11.2008 for the period April, 2005 to March, 2006 and April, 2006 to April, 2007 respectively.

5. On the other hand, the Ld. A.R. submits that as the appellant has opted for the exemption under Notification No. 50/2003-CE dt. 10.06.2003 (Area Based Exemption). In these circumstances, the appellant is not entitled to avail the Cenvat credit on capital goods.

6. Heard the parties and considered the submissions.

7. We find that in this case for the period prior to 03.05.2005, the appellant was not availing exemption under Notification No. 50/2003 ibid, but paying duty on their final goods. In these circumstances, for the period prior to 03.05.2005, the appellant has rightly availed the Cenvat credit on capital goods.

8. We further take note of the fact that the appellant is heavily relying on their letter dt. 07.03.2005 to say that extended period is not invocable as they have intimated to the Department for availment of the Cenvat credit on capital goods. The said declaration made by the appellant is extracted herein below:-

"Once, the commercial production commences from the expanded capacity, the capital goods procured for the expansion project would be used in the manufacture of exempted goods for a period of 10 years thereafter. However, the capital equipments used in the expansion is expected to have a life span much more than 10 years and hence these capital goods would be used in the manufacture of dutiable cement after the expiry of the exemption period. In any case, during trial production the said capital goods shall be used for manufacture of goods, which would not enjoy excise exemption and would be subjected to duty. Thus, during the life time of the said capital goods, they would be used for the manufacture of both dutiable as well as exempted goods. In view of the said situation, ACC-Gagan-I shall avail and utilize the credit involved in the capital goods used for the manufacture of the expanded capacity of cement, since restrictions contained in Rule 6(4) do not apply in the present case. In any case, credit would be availed and utilized as usual as per law, for other capital goods procured for the manufacture of both dutiable and exempted goods."

On going through the said declaration, we find that the said declaration does not say that the appellant has intimated to the Department that they are availing the Cenvat credit on capital goods.

In fact, it is presumed by the appellant that the life of capital goods is more than 10 years and exemption is available only upto 10 years, that does not mean that the appellant has intimated to the Department that they are availing the Cenvat credit on capital goods, which are used for manufacture of dutiable and exempted goods. We further find that during the period of availment of exemption under Notification No. 50/2003 ibid, the appellant has not intimated to the Department for availment of the Cenvat credit. Unless and until, an investigation was conducted at the end of the appellant, the said availment of the Cenvat credit on capital goods could not be unearthed. In these circumstances, we hold that extended period of limitation is rightly invoked.

9. We further take note of the fact that when the capital goods have been procured by the appellant, they were manufacturing only and only exempted final goods. In these circumstances, the appellant is not entitled to avail the Cenvat credit on capital goods; therefore, the Cenvat credit availed from 03.05.2005 on capital goods is denied. Therefore, the said demand is confirmed along with interest and penalties imposed on the appellant are also confirmed to that extent.

10. The appeals are disposed of in the above terms.

(Operative part of the order pronounced in the court)

(Bijay Kumar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)