CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

SINGLE MEMBER BENCH
COURT NO. I

APPEAL NO. E/60850/2018-EX[SM]

[Arising out of Order-in-Appeal No. JNK/EXCUS/APP/355-17-18 dated 16.03.2018 passed by the Commissioner (Appeals), CGST, Jammu]

M/s Jindal Drugs Private Limited	**:**	**Appellant(s)**
VS		
C.C.E., Jammu & Kashmir	**:**	**Respondent(s)**

Appearance:
Present for the Appellant(s): Mr. Amrinder Singh, Advocate
Present for the Respondent(s): Mr. Bhasha Ram, A.R.

CORAM:

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

Date of hearing/decision: 10.10.2018

FINAL ORDER NO. 63258/2018

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the Cenvat credit has been denied to them on the premise as per Notification No. 02/14-CE(N.T.) dt. 20.01.2014, the appellant was not entitled to credit prior to 20.01.2014 in terms of the Notification No. 01/10-CE dt. 06.02.2010.

2. The facts of the case are that the appellant is located in the State of Jammu & Kashmir and availing the benefit of exemption Notification No. 56/2002-CE dt. 14.11.2002. The appellant procured certain inputs and availed credit of duty paid on these inputs. The case of the Revenue is that during the relevant period i.e. 2012-13 to

2013-14, the assessee is not entitled to avail credit against the inputs procured from the units, who are availing exemption under Notification No. 01/10-CE dt. 06.02.2010 and after introduction of Notification No. 02/14-CE(N.T.) dt. 20.01.2014, the notification No. 01/10-CE dt. 06.02.2010 was amended thereafter the credit was available to the assessee. The matter was adjudicated, the credit availed by the appellant was denied. Against the said order, the appellant is before me.

3. Ld. Counsel for the appellant submits that the period involved in this case is 2011-12 to 2013-14 whereas the show cause notice has been issued on 10.12.2015 by invoking the extended period of limitation. He also submits that in the case of *Dharampal Satyapal Limited vs. CCE, Noida-2017 (352) ELT 396 (Tri.-All.),* the appellant is entitled to take credit on the inputs. He further submits that the similar issue has been decided in the favour of the appellant by this Tribunal in the case of *Saraswati Agro Chemicals (India) vs. CCE, Jammu* vide *Final Order No. 63159/2018 dt. 14.09.2018* in *Appeal No. E/60471/2018-EX[SM]*, wherein this Tribunal has held that the show cause notice issued to the appellant is barred by limitation. Therefore, in this case also, the demand is barred by limitation.

4. On the other hand, Ld. A.R. reiterated the findings of the Commissioner (Appeals) in the impugned order and submits that in cases of similarly placed assessee where the credit was allowed to them located in the State of Jammu & Kashmir, the appeals have been filed by the Revenue before the Commissioner (Appeals).

5. Heard the parties and considered the submissions.

6. Considering the facts that the similar issue has come up before this Tribunal in the case of *Saraswati Agro Chemicals India (supra),* wherein this Tribunal has observed as under:

> *"6. Without going into the merits of the case, I find that similarly placed assessee was allowed the credit although against those orders, the appeals have been filed by the Revenue before the Commissioner (Appeals), in that circumstance, when the Revenue is having divergent views on the issue, the extended period of limitation is not applicable. Admittedly, in this case, the show cause notice has been issued by invoking the extended period of limitation, therefore, I hold that the denial of credit is barred by limitation. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any."*

7. In view of the above, I hold that the show cause notice issued to the appellant is barred by limitation and accordingly is set aside. Therefore, the impugned order is not sustainable and the same is set aside.

8. In result, the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

RAS'