CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Appeal No. E/4044/2010 -[SM]

Cross Application No. E/Cross/44/2011

(Arising out of Order-in-Appeal No. 359/BK/RTK/2010 dated 13.09.2010 passed by the Commissioner (Appeals), Delhi-III, Gurgaon)

C.C.E. & S.T., Rohtak ......**Appellant**
(Pacific City Centre, IInd Floor, Near Jat Bhawan,
Delhi Road, Rohtak, Haryana)

VERSUS

Lakshmi Precision Screws Ltd. ......**Respondent**
(Plant-II, Hisar Road, Rohtak, Haryana)

APPEARANCE:

Mr. Vijay Gupta, Authorised Representative for the Appellant

Ms. Krati Somani, Advocate for the Respondent

CORAM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 60451 of 2019

DATE OF HEARING: 01.05.2019
DATE OF DECISION: 01.05.2019

PER ASHOK JINDAL:

The Revenue is in appeal against the impugned order, wherein the learned Commissioner (Appeals) has allowed the refund claim of the respondent under Rule 5 of the Cenvat Credit Rules, 2004 for export of the goods for lying unutilized Cenvat credit in their cenvat credit account. The case of the Revenue is that the refund claim is barred by limitation as the same has not been filed within one year from the date of export in terms of Section 11B of the Central Excise Act, 1944. Under Rule 5 of the Cenvat Credit Rules, 2004, the refund claim is required to be filed after the end of the quarter within one year. Therefore, the Revenue is in appeal.

2. Heard the parties.

3. Considering the fact that the identical issue has been decided by this Tribunal in respondent's own case vide ***Final Order No. 447/2016-CHD dt. 25.04.2016***, wherein this Tribunal has held as under:-

> *"5. Further, I find that the issue of limitation was never raised in the show cause notice and the respondent was not given any chance to contest the said issue. Further, I observe that the provisions of Section 11B of the Act are not applicable to the facts of this case. In these circumstances, the issue of limitation is also decided against the Revenue."*

4. In view of the above decision, I do not find any infirmity in the impugned order; accordingly, the same is upheld.

5. In result, the appeal filed by the Revenue is dismissed. Cross objection filed by the respondent is also disposed off in above terms.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

RA_Saifi