CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – E-Hearing

Excise Appeal No. 60238 Of 2020

[Arising out of OIA No. JNK-EXCUS-APP-269-273-19-20 dated 05.03.2020 passed by the Commissioner (Appeals) of Central Goods and Service Tax and Central Excise Jammu (J&K)]

M/s Anu Products Ltd. : **Appellant (s)**
Industrial Growth Centre, Samba (J&K)

Vs

CCE & ST- Jammu & Kashmir : **Respondent (s)**
Commissionerate OB-32, Rail Road Complex, Jammu (J &K)

APPEARANCE:
Shri Vikrant Kackaria, Advocate for the Appellant
Shri Rajiv Gupta, Shri H. S. Brar, Authorised Representative for the Respondent

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

ORDER No. A/60401 / 2020

Date of Hearing:24.09.2020

Date of Decision:24.09.2020

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the 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 avail credit prior to the Notification No. 02/14 (N.T) dt. 20.01.2014 in terms of Notification No. 01/10-CE dt. 6.02.2010.

2. The facts of the case are that the appellant is located in the state of Jammu & Kashmir and was availing the benefit of exemption Notification No. 01/10-CE dated 6.2.2010. 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. 01.08.2012 to 19.01.2014, the appellant was not entitled to avail cenvat credit
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against the inputs procured by the units, who are availing exemption under Notification No. 01/10-CE dt. 6.2.2010 and after introduction of Notification No. 02/14-CE (N.T.) dt. 20.01.2014 on which the notification no. 01.10-CE dt. 06.02.2010 was amended thereafter the credit was available to the appellant. The matter was adjudicated, the credit availed by the appellant was denied. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that the period involved in this case is 01.08.2012 to 19.01.2014 and the show cause notice has been issued on 31.08.2017 by invoking extended period of limitation. Therefore, the show cause notice is highly time barred. He also submits that in the case of Dharampal Satyapal Limited vs. CCE, Noida – 2017 (352) ELT 396 (Tri.-All.) it has been held by this Tribunal that the appellant is entitled to take cenvat credit on the inputs during the impugned period. He further submits that the similar issue came before this Tribunal in the case of Saraswati Agro Chemicals (India) Pvt. Ltd. vs. CCE, Jammu in Appeal No. E/60471/2018 wherein this Tribunal held that the extended period of limitation is not invoking as per Final Order No. 63159/2018 dt. 14.09.2018, therefore, the impugned order is to be set-aside.

4. The Ld. AR reiterated the findings of the Commissioner (Appeals) in the impugned order and submits that the invoices were never produced before the department by the appellant and the appellant never verified weather the supplier has availed the benefit of the notification in question or not? In that circumstances, the extended period of limitation is rightly invoked.

5. Heard the parties and considered the submissions.

6. Without going into the merit of the case at this stage the appellant has contesting only limitation. Therefore, I am dealing only the issue of limitation, I find that there is no provision in law for the appellant to file invoices before the department in time. In that circumstances, I find that as the assessee was allowed credit by the adjudicating authority although the revenue has filed appeal against those orders before the Commissioner (Appeals). In that circumstances, when the adjudicating authorities are having a divergent views, I hold that the extended period of limitation is not invokable in the facts and circumstances of this case. Admittedly, in the case in hand, the show cause notice has been issued by invoking extended period of limitation, therefore, I hold that the denial of credit is barred by limitation. The similar view was taken by this Tribunal in the case of Saraswati Agro Chemical (India) Pvt. Ltd. (supra). Further, in the case of Dharampal Satyapal Limited (supra), this Tribunal has taken a view on merit and held that the appellant is entitled to take cenvat credit on inputs.

7. In these circumstances, the show cause notice issued to the appellant is barred by limitation. Accordingly, I hold that the demand against the appellant is barred by limitation. In that circumstances, I set-aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated & pronounced in the Open Court)

(Ashok Jindal)
MEMBER (JUDICIAL)

G.Y.