

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I (E-HEARING)

Excise Appeal No. 60435 of 2020

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-69-20-21 dated 23.08.2020 passed by the Commissioner of CGST (Appeals), Jammu]

Indogulf Cropsciences Ltd
(Sidco Industrial Growth Centre-I,
Samba, Jammu & Kashmir - 184121)

.....Appellant

VERSUS

Commissioner of CE & ST, J & K
(OB-32, Rail Head Complex,
Jammu & Kashmir -180012)

.....Respondent

APPEARANCE:

Present for the Appellant: Mr. Ajay Jain, Advocate

Present for the Respondent: Mr. Rajesh Rai Mr. Mr. Bhasha Ram, Authorized
Representatives

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

FINAL ORDER NO. 60560/2021

DATE OF HEARING: 18.03.2021
DATE OF DECISION: 18.03.2021

PER 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. 06.02.2010.

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 06.02.2010. 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. February 2010 to January 2014, the appellant was not entitled to avail cenvat credit against the inputs procured by 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 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 February 2010 to January 2014 and the show cause notice has been issued on 30.05.2017 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. A.R. reiterates 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 whether the supplier has availed the benefit of the notification in question or not? In these 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 contested 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 these 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 these circumstances, when the adjudicating authorities are having a divergent view, I hold that the extended period of limitation is not invocable 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 and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)