CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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

Excise Appeal No. 60369 of 2020

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-269-273-19-20 dated 05.03.2020 passed by the Commissioner (Appeals) of Central Excise, Jammu]

Hardcastle Petrofer Pvt Ltd **......Appellant**
165, SICOP Industrial Estate, Kathua,
Jammu-Kashmir - 184102

VERSUS

Commissioner of CE & ST, J&K **......Respondent**
OB-32, Rail Head Complex, Jammu,
J&K - 180012

with

Excise Appeal No. 60286 of 2020

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-269-273-19-20 dated 05.03.2020 passed by the Commissioner (Appeals) of Central Excise, Jammu]

Hawco Petrofer LLP **......Appellant**
SICOP IID Center, Govindsar, Kathua,
Jammu-Kashmir - 184102

VERSUS

Commissioner of CE & ST, J&K **......Respondent**
OB-32, Rail Head Complex, Jammu,
J&K - 180012

with

Excise Appeal No. 60287 of 2020

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-269-273-19-20 dated 05.03.2020 passed by the Commissioner (Appeals) of Central Excise, Jammu]

Aman Paper Mills **......Appellant**
SICOP Industrial Estate, Kathua,
Jammu-Kashmir - 184102

VERSUS

Commissioner of CE & ST, J&K **......Respondent**
OB-32, Rail Head Complex, Jammu,
J&K - 180012

and

Excise Appeal No. 60288 of 2020

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-269-273-19-20 dated 05.03.2020 passed by the Commissioner (Appeals) of Central Excise, Jammu]

Komal Paper Mills **......Appellant**
Unit II, Vill Chak Gota, Jammu Road, Kathua,
Jammu-Kashmir

VERSUS

Commissioner of CE & ST, J&K **......Respondent**
OB-32, Rail Head Complex, Jammu,
J&K - 180012

APPEARANCE:

Present for the Appellants: Mr. Jatin Mahajan, Advocate

Present for the Respondent: Mr. Rajesh Rai, Mr. Amandeep Kumar, ARs.

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

FINAL ORDER NO. 60811-60814/2021

DATE OF HEARING: 27.04.2021
DATE OF DECISION: 27.04.2021

PER ASHOK JINDAL:

The appellants are 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 appellants are located in the state of Jammu & Kashmir and were availing the benefit of exemption Notification No. 01/10-CE dated 06.02.2010. The appellants 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. June 2012

to August 2013, December 2012 to January 2014 and 2012-14 respectively, the appellants were 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 appellants was denied. Against the said order, the appellants are before me.

3. The Ld. Counsel for the appellants submits that the period involved in this case is June 2012 to August 2013, December 2012 to January 2014 and 2012-14 respectively and the show cause notices have been issued on 20.06.2017, 29.11.2017 and 19.4.2017 respectively by invoking extended period of limitation. Therefore, the show cause notices are 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 weather 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 contesting only limitation, therefore, I am dealing only the issue of limitation. I find that there is no provision in law for the appellants 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 invokable in the facts and circumstances of this case. Admittedly, in the case in hand, the show cause notices have 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 notices issued to the appellants are barred by limitation. Accordingly, I hold that the demand against the appellants is barred by limitation. In that

circumstances, I set-aside the impugned order and allow the appeals with consequential relief, if any.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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