IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal No. E/40320/2018

(Arising out of Order-in-Appeal No. 358/2017 (CTA-I) dated 17.11.2017 passed by the Commissioner of G.S.T. & C.E. (Appeals-I), Chennai)

M/s. Drill Jig Bushing Co. (Madras) Pvt. Ltd. : Appellant

Vs.

The Commissioner of G.S.T. & Central Excise, Chennai North Commissionerate : Respondent

Appearance:-
Shri. S. Sankaravadivelu, Advocate
for the Appellant

Shri. S. Govindarajan, AC (AR)
for the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing/Decision:**06.07.2018**

Final Order No. 42009 / 2018

Brief facts are that the assessee was having factory premises at Industrial Estate, Ambattur in Door No. 44. They later obtained further premises at Door No. 34 which was separated by a road within the Industrial Estate premises. They shifted certain capital goods to the second premises and informed the same to the Department vide letter dated 06.01.2003. There was no response from the Department. Later, the Department issued later dated

27.04.2006 asking them to clarify whether both the units are separated by a road and whether separate registration for these units are required. To this, the appellant had replied, stating that although the manufacturing activities in both the units are interlinked and interconnected, finished products are removed from unit No. 44 only. They were also paying central excise duty on finished products. The said letter was issued in 09.05.2006. Though several audits were conducted, later for the audit in 2014 an objection was raised stating that credit availed on capital goods installed in the unit 2 (No. 34) is not eligible for credit to the tune of Rs. 7,19,581/-. The appellant replied to the said objection stating that both the units are interconnected and manufacturing activities are integral to one another. The other audit objection was with regard to availment of credit on Housekeeping Services in the unit No. 44 and also maintenance of air conditioners services availed in the second unit No. 34. The appellant had included explanation regarding these issues also in their reply.

1.2 However, a Show Cause Notice has been issued after two years on 29.02.2016, proposing to disallow the credit on Housekeeping Services, Maintenance and Repair Services with regard to air conditioners installed in the second unit and also the credit availed on capital goods installed in the second unit. After due process of law, the Original Authority confirmed the demand along with interest and imposed penalties. In appeal, the Commissioner (Appeals) dropped the demand in respect of credit availed on capital goods to the tune of Rs. 71,796/- on the ground of limitation as the invoices were more than five years old. Aggrieved by the confirmation of demand in respect of capital goods and input services, the appellant is now before the Tribunal.

2. On behalf of the appellant, the learned Counsel Shri. S. Sankaravadivelu submitted that the appellants had informed as long back in 2003 that the capital goods were shifted from unit at Door No. 44 to the unit at Door No. 34. It was also stated by them that these premises are separated by a road within the industrial Estate area. The Department, thereafter, has requested for clarification only after two years, to which the appellant had replied. The audit objection in respect of issues under consideration was raised only after eight years, to which the appellant had filed a detailed reply stating that the manufacturing activity in both the units are interlinked and interconnected and that the finished products are removed from unit No. 44 by payment of excise duty. Even then, the Show Cause Notice has been issued after two years

invoking extended period and alleging suppression of facts; that the appellant has been diligent in disclosing all facts and explaining the same to the Department. However, the Department has not responded to the explanations and clarifications given by the appellant. Further, after issuance of Show Cause Notice, the appellant made requisition for registration of new premises. However, till now, the Department has not responded to this requisition. That, therefore, the demand raised, invoking extended period, cannot sustain and he prayed that the same may be set aside.

3. The learned AR, Shri. S. Govindarajan, supported the findings in the impugned order.

4. Heard both sides.

5.1 On going through the records, I find that the appellant vide letter dated 06.01.2003 has informed the Department that they are shifting their capital goods from Unit No. 44 to Unit No. 34. The Department has not cared to respond to this letter and only after three years, on 27.04.2006, have issued a letter seeking clarification as to whether separate registration is required for Unit at Door No. 34. The appellant has responded to this letter by explaining that the manufacturing activity that is undertaken in both these units are interconnected. They also furnished the flow chart of the manufacturing activity and explained that finished products were removed from Door No. 44 by paying excise duty which is already registered. Thereafter, for almost eight years, the Department has been in their bureaucratic slumber and only in 2014 the audit has raised an objection that the credit availed on capital goods shifted to the second unit, i.e. Unit No. 34, is not eligible for credit to the tune of Rs. 7,19,581/-. The appellant has given a detailed reply to the audit objections. Still, no Show Cause Notice was given during the normal period after audit objections. The Department has again taken two years to issue the Show Cause Notice. The lower authority dropped the demand in respect of two invoices to the tune of Rs. 71,796/- on the ground of limitation. There is no positive act or any iota of evidence brought out to show suppression of facts on the part of the appellant with intention to evade payment of duty. The appellant has, vide letter dated 06.01.2003 ,informed of the shifting of capital goods. In such circumstances I am of the view that the demand invoking extended period cannot sustain and requires to be set aside, which I hereby do.

5.2 The other issue is with regard to credit availed on Housekeeping Services and Maintenance and Repair Services availed in the unit at Door No. 34. Housekeeping Services are availed for keeping the premises in a lean and hygienic manner. The Hon'ble jurisdictional High Court in the Case of *Commissioner of Service Tax-III Chennai Vs. CESTAT Chennai – 2017 (3) G.S.T.L. 45 (Mad.)* has held that even if the premises is not registered, the credit is available. From the above discussions, I am of the view that the impugned order cannot sustain and the same is set aside on the ground of limitation.

6. The appeal is allowed, with consequential reliefs, if any.

(Dictated and pronounced in open court)

(Sulekha Beevi C.S.)
Member (Judicial)

Sdd