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

Appeal No.: E/40750/2018

(Arising out of Order-in-Appeal No. 26/2017 (CTA-II) dated 31.01.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-II), Chennai)

M/s. Samraj Engineering Controls Pvt. Ltd. : Appellant

Vs.

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

Appearance:-
Shri. G. Derrick, Advocate
for the Appellant
Shri. R. Subramaniyan, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing :17.09.2018

Date of Pronouncement : 25.09.2018

Final Order No. *42502 / 2018*

This appeal is filed by the assessee. When the matter was taken up for hearing, Ld. Advocate appearing for the assessee submitted that the appeal is only against the invocation of larger period of limitation and imposition of penalty and that no challenge is made on the merits of the case.

2. The appellant is a manufacturer of sheet metal components which was supplied to various industries on payment of appropriate excise duty. The appellant also manufactures parts of wind power generator which is exempted from excise duty in terms of Notification No. 12/2012-CE. The appellant uses chequered steel sheets and aluminium sheets in the manufacture of wind power generator on which the appellant had availed CENVAT Credit of the duty paid. A Show Cause Notice dated 13.10.2016 was issued for the recovery of CENVAT Credit availed on these chequered steel sheets and aluminium sheets which according to the appellant were exempted from payment of duty and the demand sought to be recovered was for the period from December, 2012 to August, 2015. The above Show Cause Notice culminated in the Order-in-Original dated 13.06.2017 in relation to which interest and penalty were also levied. The appellant did not meet with success on appeal before the Commissioner (Appeals-II), Chennai and therefore, is in appeal before this forum.

3. Heard Shri. G. Derrick, Ld. Advocate appearing for the assessee and Shri. R. Subramaniyan, Ld. DR appearing for the Revenue. Admittedly, the appeal challenges only the invocation of extended period of limitation by the Revenue.

4. I have considered the rival contentions, perused the documents placed on record and have also gone through the various decisions relied on by the Ld. Advocate. The appellant, in response to the Show Cause Notice, has replied that it admitted the fact that CENVAT Credit of duty paid on aluminium sheets and MS chequered steel sheets was not admissible since they were not the inputs used for dutiable goods. After being pointed out about the above mistake, they have reversed the same on 31.01.2016. The above reply is part of the appeal record which runs from page 32 onwards. In the same reply at paragraph 6, the appellant has submitted that during the second audit in the month of October 2015, the availment of CENVAT Credit on the above items was pointed out, in response to which, they admitted to have reversed the CENVAT Credit in January 2016, and it is never the case of the assessee that the above reversal was at the insistence of the Revenue which was otherwise not correct or improper.

5. Having admitted its mistake and paying duty without any resistance on the one hand, whether the assessee could challenge the same, indirectly, on the ground of limitation, requires to be considered. From the decision of the Hon'ble High Court of Karnataka in the case of ***Commissioner of Central Excise,***

Bangalore-I Vs. MTR Foods Ltd. – 2012 (282) E.L.T. 196 (Kar.), I find that the Hon'ble High Court has dismissed the Department appeal filed against the Order of CESTAT where the Bangalore Bench of the Tribunal had without going into the merits of the matter, set aside the impugned Order therein solely on the ground of limitation. The Hon'ble Ahmedabad Bench of the CESTAT in the case of ***Garrison Polysacks P. Ltd. Vs. Commissioner of Service Tax, Vadodara-II – 2013 (292) E.L.T. 513 (Tri. – Ahmd.)*** after following the above decision of the Hon'ble High Court of Karnataka, has set aside the demand of interest and imposition of penalty and it has been observed by the Bench that it was a fit case wherein interest liability fastened on the appellant and the equivalent amount of penalty imposed under Section 11AC of the Central Excise Act was required to be set aside. I note that since the assessee has not challenged the legality of the duty demand, it is not necessary to give a finding on the invocation of extended period of limitation. This is because if the plea of the appellant is accepted then that may lead to an anomalous situation where the appellant having paid the duty without challenging the assessment order, would be heard praying to quash the assessment order indirectly on the ground of technicalities.

6. In view of the foregoing and the fact that the appellant had paid the duty before of issuance of Show Cause Notice, it is a fit case to exercise the jurisdiction under Section 80 and therefore, I set aside the penalty levied and confirmed by the first appellate authority.

7. The appeal is therefore allowed partly to the extent indicated hereinabove.

*(Pronounced in open Court on **25.09.2018**)*

(P Dinesha)
Member (Judicial)

Sdd