CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH - COURT No. I

Excise Appeal No.40733 of 2016

(Arising out of Order-in-Original No. TCP/Excus/011/2016 (C. Ex.) dated 13.01.2016 passed by Commissioner of Central Excise, Trichy)

M/s. Xomox Sanmar Limited, Unit II, **...Appellant**
No.88/1A, Vadugapatti Village,
Viralimalai, Pudukottai District,
Pin – 621 316.

VERSUS

Commissioner of CGST & Central Excise, **...Respondent**
No.1, Williams Road, Cantonment,
Trichy – 620 001.

APPEARANCE :

Ms. Radhika Chandrasekhar Advocate, for the Appellant
Shri Anoop Singh, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V. MEMBER (JUDICIAL)

FINAL ORDER No.41524/2024

DATE OF HEARING : 19.11.2024
DATE OF DECISION :28.11.2024

Per AJAYAN T.V.

1. The appellant has preferred this appeal being aggrieved by the impugned order in original by which the adjudicating authority has demanded the cenvat credit availed and utilised by them during the period from July 2009 to December 2013, terming it as ineligible availment and invoking the extended period of limitation. The learned adjudicating authority has also imposed penalty equivalent to the demand and directed payment of interest at appropriate rates.

2. The facts germane to the dispute, succinctly, is that the appellant is engaged in manufacture of industrial valves and spares for valves falling under Chapter 84 of the first schedule to the Central Excise Tariff Act, 1985 and is registered with the department.

3. During the course of audit of their accounts by the internal audit wing of the jurisdictional Commissionerate, it was noticed that, in certain cases, the appellant had taken cenvat credit on the basis of the documents that were issued in the name of M/s. Xomax Sanmar Limited wherein the address of the consignee / buyer/recipient was mentioned as '89/1, Vadugapatti Village, Viralimalai' and the ECC No. (Central Excise Registration No. of the consignee/buyer/recipient was mentioned as 'AAACX0247KXM001'). The name, address and the ECC Number mentioned in such invoices belonged to another unit which is M/s. Xomox Sanmar Limited, Unit 1, Viralimalai who are also manufacturers of industrial valves, albeit under a distinct Central Excise Registration. The Department, being of the view that such credit taken is inadmissible, issued a show cause notice dated 31.07.2014 alleging that taking of the credit on the basis of such documents has been suppressed by the appellant with intent to evade payment of duty and that by taking such credit the appellant has contravened the provisions of Rule 3(1) and Rule 9(1) of the Cenvat Credit Rules 2004. The show cause notice proposed recovery of an amount of Rs.54,92,267/- under Rule 14 of the Cenvat Credit Rules ibid read with proviso to Section 11A(1)/Section 11A(5) of the Central Excise Act, 1944 along with applicable interest under Section 11AB/Section 11AA of the Central

Excise Act ibid and imposition of penalty under Rule 15(2) of the cenvat credit rules ibid read with section 11AC of the Central Excise Act ibid.

4. The appellant filed a reply dated 28.08.2014 to the show cause notice consequent to which they were granted a personal hearing on 24.03.2015. Subsequent to the personal hearing the adjudicating authority called for a verification report from the jurisdictional Divisional Officer regarding receipt of the goods at the factory of the appellant requiring it to be verified from the relevant documents including GR documents, inward-outward registers, input stock account registers etc. The Divisional Assistant Commissioner submitted a report dated 21.07.2015 which was held to be inconclusive by the adjudicating authority who confirmed the demand along with appropriate interest while also imposing a penalty equivalent to the demand, vide the impugned order in original. Hence the instant appeal.

5. We have heard the learned counsel Ms. Radhika Chandrasekhar representing the appellant and the learned authorized representative Shri. Anoop Singh representing the respondent Department.

6. The arguments of the learned counsel Ms. Radhika Chandrasekhar appearing for the appellant is briefly summarized as follows:

i) The Appellant is engaged in the manufacture of industrial valves and spares falling under Chapter 84 of First Schedule to the Central Excise Tariff Act, 1985. The Appellant has availed the cenvat credit in respect of the excise duty paid on inputs and capital goods and service tax paid on input services.

ii) The Department issued a show cause notice No.32/2014 dated 31.07.2014 proposing to deny cenvat credit together interest and penalty for the period July 2009 to December 2013. The allegation in the show cause notice is that the invoice contained the address of another person.

iii) The appellant filed a detailed reply and informed the adjudicating authority that the factory of the appellant is located at Vadugampatti Village, Viralimalai and in the same premises there are two units. The appellant herein i.e M/s. Xomox Sanmar Ltd. Unit 2 (Pacific Valve Division) is engaged in the manufacture of globe valves, check valves, gate vales and spares. That the appellant has raised purchase order and materials were also received by the appellant and that the vendors inadvertently raised invoices in the name of Unit 1 of Xomox Division.

iv) The appellant produced all the documents to prove that the materials were received by appellant and accounted as stock in their books and utilised for manufacture.

v) The adjudicating authority vide Order in Original No. TCP / Excus / 011/2016(CEX) dated 13.01.2016 passed an order confirming the proposal to deny the cenvat credit. The Order in Original ignored the factum of receipt and utilization of the inputs and the report submitted by the Jurisdictional Assistant Commissioner.

vi) The appellant has produced documentary evidence such as Goods Receipt Note and other connected records for verification. The Order in Original at Para 8 has admitted that the appellant produced copies of specimen purchase orders. At para 9 of the OIO the adjudicating authority refers to the report submitted by the Divisional Officer.

vii) The adjudicating authority ought to have appreciated that the appellant's factory is located at Vadugappatti Village, Viralimalai and in the same premises the appellant has two units namely (i) Xomox Division in Survey N.89/1, Vadugapatti Village having registration number AACX0247KXM001 and engaged in the manufacture of Sleeved Plug Valves, Lined Plug Valves, Ball Check Valves and Butterfly valves and (ii) Pacific Valve Division in Survey No.88/1A, Vadugappatti Village having registration number AAACXO247KXM002 and engaged in the manufacture of Globe Valve, Check Valve, Gate Valve and Spares.

viii) Having accepted that the goods were received and utilised by the appellant which is a substantial requirement for availing cenvat credit, the denial of credit referring to Rule 9 is not sustainable.

ix) The Jurisdictional Officer's Report which is extracted at para 9 of the O1O specifically indicates that the goods were received and utilised at the appellant's premises. Further along with the report the Jurisdictional Officer has forwarded the copies of documents like screen short of GRN taken from the computerised system to show the accounts of the receipt of the goods and services by the appellant.

x) The appellant had specifically explained the character of the input and that the goods were meant for the manufacture at the appellant's premises and not in the other unit. The appellant has complied with the requirement of Rule 9(5) of Cenvat Credit Rules.

xi) It is a settled position of law that substantial benefit cannot be denied because of some procedural lapse. The adjudicating authority had failed to appreciate that the inputs used in Unit I and inputs used in Unit 2 are totally different.

xii) That reliance is placed upon the following decisions:

a) Modiline Travel Services Pvt Ltd. V's CST - No.51666/2023 dt.2012.2023, CESTAT, New Delhi Final Order

b) A.K. Engineers Vs Commissioner of C.Ex.ST & Cus., Bangalore-II (2017) 349 ELT 180 (Tri-Bang)

c)Bharat Sanchar Nigam Ltd-(2024) 24 Centax 131

The learned counsel prayed that the appeal may be allowed.

7. Per contra, the learned authorized representative Shri Anoop Singh strenuously opposed the contentions of the learned counsel

for the appellant and made submissions, that are briefly summarized as follows:

i. As per the provisions of Rule 3(1) of the Cenvat Credit Rules, 2004 a manufacturer of final product is allowed to take cenvat credit on inputs, capital goods and input services only if the following conditions are satisfied:

    a. The inputs should be received in the factory of the manufacturer of the final products, i.e. in the factory of the manufacture of excisable goods that are manufactured from inputs.
    b. The inputs should be used in the manufacture of final products.
    c. The inputs should not be goods having no relationship whatsoever with the manufacture of final products.
    d. The capital goods should be used in the factory of the manufacture of final products.
    e. The input services should be received by the manufacture of final products and such input services should be used by the manufactured in or in relation to the manufacture of the final products.
    f. The documents on the basis of which credit is taken should conform to the requirements of Rule 9(1) of the CCR.
    g. The manufacturer should maintain the records for the receipt, consumption etc. of the inputs, capital goods and input services. The burden of proof regarding the

admissibility of the credit lies on the manufacturer taking credit.

ii. The jurisdictional Assistant Commissioner from whom a verification report was called for regarding receipt of goods to the concerned factory after getting it verified from the relevant documents including GR documents, inward outward registers, stock account registers etc., has along with his report forwarded copies of the following documents namely screenshots of GRN titled as "Display Material Document' taken from their computerized system to show the accounting of the receipt off the goods in the appellant's unit and screenshots taken from their computerized accounts showing the availment of service tax credit by the appellant's unit and that the adjudicating authority has found that from these documents produced by the appellant it cannot be presumed that the goods and services were used in or in relation to the manufacture of the final products.

iii. The learned adjudicating authority has also held that the burden of establishing the eligibility on the part of the appellant involves establishing the fact that no credit on such invoices were availed by the other unit which also belonged to the same company and that therefore the verification conducted by the jurisdictional officer does not lead to any conclusive proof that the subject goods/services were used by the appellant in or in relation to the manufacture of their final product and that no credit based on such invoices were actually claimed/availed by the unit in whose name the disputed invoices were issued.

iv. The learned adjudicating authority has also held that while the appellant has claimed that they had regularly filed their ER-1 returns and had disclosed the details of cenvat credit availed by them in the statutory returns and hence there is no suppression of facts and extended period of limitation cannot be invoked; however on the basis of the details submitted by the appellant in their returns it is not possible for the scrutinizing officer to determine the eligibility of the cenvat credit which was disclosed in their return based on self-assessment.

v. That in the era of self-assessment the onus of taking legitimate credit has been passed on to the assessee and therefore adjudicating authority has held that the appellant has deliberately withheld and suppressed material facts with intent to avail ineligible credit and thereby to evade payment of duty and the extended period of limitation is rightly invoked.

vi. That the case laws cited by the learned counsel for the appellant are distinguishable and have been rendered in different facts and circumstances.

8. We have heard both sides and perused the records. The issues that arise for determination are whether in the given facts and circumstances, the appellant is eligible to avail credit on the invoices that are addressed to unit I of the appellant, the availment of which is alleged to be in contravention of the provisions of Rule 3(1) and

Rule 9(1) of the Cenvat Credit Rules 2004; given also the verification report submitted by the jurisdictional Divisional Assistant Commissioner and whether the extended period of limitation has been rightly invoked.

9. Upon delving into the records, we find that the learned adjudicating authority has called for a verification report from the jurisdictional Divisional Officer regarding receipt of goods to the factory of the appellant after getting it verified from the relevant documents, including GR documents, inward-outward registers, input stock account registers etc., and this aspect is recorded in para 9 of the impugned Order in Original as under:

> *"Accordingly, the Divisional Assistant Commissioner submitted a report vide No. IV/09/08/2014-CEx Adj dated 21.07.2015, the gist of which submitted below:*
>
> *Annexure- 'A'*
>
> *Upon verification, it is found that 70 invoices are though addressed to Unit I, the goods were received and utilized in Unit II as per GRN submitted by them for verification. Further the relevant invoice for Sl. No. 3 indicates the address of their Head office at Chennai, but the corresponding GRN confirms the receipt and use of the goods in Unit II. Also, the relevant invoice at Sl. No. 61 indicates the correct address of Unit II.*
>
> *Annexure-'B'*
>
> *Upon verification, it is found that 61 invoices are though addressed to Unit 1, the goods were received and utilized in Unit II as per GRN submitted by them for verification.*
>
> *Annexure-'C'*

Upon verification, it is found that all the Bills of Entry except St. No. 22 and 23 are though addressed to Unit I, the goods were received and utilized in Unit II as per GRN submitted by them for verification. For St. No.22 and 23, they have submitted GRN copies addressed to Unit II but no bills of entry submitted for verification.

Annexure-'D'

Upon verification, it is found that 22 invoices are though addressed to Unit I, the services were received and also credit was availed in Unit II as per the statement submitted during that particular period by the assessee.

Annexure-'E'

Upon verification, it is found that 14 invoices are though addressed to Unit I, the services were received and also credit was availed in Unit II as per the statement submitted during that particular period by the assessee.

Annexure-'F'

The total no of invoices 499

Upon verification, it is found that in respect of Sl. Nos. 23, 28, 29, 34, 204, 249, 250, 251 the invoices are though addressed to Unit I, the goods were received and utilized in Unit II as per GRN submitted by them for verification.

In respect of Sl. No. 1 to 17, 19 to 22, 24 to 27, 30 to 33, 35 to 192, 194 to 203, 205 to 248, 252 to 257, the invoices were addressed to Unit II, the goods were received and utilized in Un II as per GRN submitted by them for verification.

In respect of Sl. No. 18, 193, 278 to 499, they submitted GRN copies addressed to Unit II but no invoices submitted for verification".

10. The learned adjudicating authority has also gone on to state that along with the above report, the jurisdictional Assistant Commissioner has forwarded copies of the following documents:

i. In respect of goods, screen shots of GRN titled as 'Display Material Document' taken from their computerized system to show the accounting of the receipt of the goods in the assessee unit.

ii. In respect of services, screen shots taken from their computerized accounts showing the availment of service tax credit by the assessee unit.

11. We notice that the learned adjudicating authority, in his findings at para 12 of the impugned Order in Original, holds that the cardinal principal of Cenvat Credit Rules 2004 is that when there are any typographical errors in the invoices or any mistakes committed by the sellers in the preparation of the invoices, the substantive benefit should not be denied. Again, in para 15 of the Order in Original ibid, the learned adjudicating authority finds that as per the provisions of Rule 9(2) of the Cenvat Credit Rules, 2004, and as per the decision rendered on the subject issue by various Tribunals, when the substantive issue of receipt of the goods in the factory of the manufacturer and its use in the manufacture of the final product is established beyond doubt, any other procedural lapses such as mistakes in the invoices, should not lead to denial of the substantial benefit like cenvat credit. Having found thus, he proceeds to indicate that the substantive point to be proved for eligibility of cenvat credit are that (a) the goods should have been received in the factory of

manufacture and should have been used in or in relation to the manufacture of the final products and (b) the services should have been received by the manufacturer and should have been used in or in relation to the manufacture of the final products.

12. At this juncture, we may note that the Rule 9(2) of the Cenvat Credit Rules, 2004 and its proviso are as under:

> *9(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:*
>
> *Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.*

13. We further observe that the learned adjudicating authority has rendered a finding at para 16 of the impugned Order in Original that on perusal of the documents ***furnished by the jurisdictional Assistant Commissioner*** in this regard, he finds that ***the appellant has produced the following documents***, (a) print outs of the GRN taken from their computerised accounts in proof that the goods were received in their factory and (b) print out taken from their computerised account in proof that they had taken service tax

credit in respect of such services. The learned adjudicating authority then goes on to hold that from the documents produced by the appellant during the course of verification he finds that they have produced evidences in the form of computer printouts taken from their computerised accounts in proof of having accounted for the receipt of the goods in question in their books of accounts, however, no documentary evidence of any sort has been produced by them in proof that the subject goods/services were used by them in or in relation to the manufacture of their products and the report received does not throw light as to how it was concluded that the goods covered in the case have been actually utilised/consumed in the manufacture of dutiable excisable goods.

14. Undoubtedly, the finding of the learned adjudicating authority that when there are any typographical errors in the invoices or any mistakes committed by the sellers in the preparation of the invoices, and any other procedural lapses such as mistakes in the invoices, that ought not to result in the denial of the substantive benefit of cenvat credit, does reflect the correct understanding of the position in law as laid down by the various decisions of Tribunal and higher judicial forums. However, we are unable to concur with his rejection of the report of the jurisdictional Divisional Assistant Commissioner and consequent denial of cenvat credit availed on the invoices addressed to Unit I, for the reasons elaborated infra.

15. We opine that the learned adjudicating authority has erred in rendering the aforementioned finding on the assumption that **only** the documents ***furnished by the jurisdictional Assistant***

Commissioner while submitting his report ***have been produced by the appellant for verification***.

16. The learned adjudicating authority has recorded that the verification report that called for from the Divisional Officer required the said officer to get it verified from the relevant documents including GR documents, inward-outward registers, input stock account registers etc. regarding the receipt and utilization of the goods and services. If the document under sub-rule (1) of Rule 9 does not contain all particulars, the proviso to Rule 9(2) of the Cenvat Credit Rules, 2004 stipulates that if the said document contains the details of the duty or service tax payable, description of the goods or taxable services, assessable value, central excise or service tax registration number of the person issuing the invoice, name and address of the factory or warehouse or premises of first or second stage dealer or provider of taxable service, and the Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.

17. Thus, the remit of the Divisional Assistant Commissioner tasked by the learned adjudicating authority to submit a verification report, was in consonance with the mandate of proviso to Rule 9(2) of the Cenvat Credit Rules, 2004. The learned counsel for the appellant has submitted that the appellant has produced documentary evidence such as Goods Receipt Note and other

connected records for verification and also places reliance on the report submitted by the Divisional Assistant Commissioner as corroboration of production of such documentary evidence. Therefore, when the report submitted by the jurisdictional Divisional Assistant Commissioner, pursuant to the directions of the learned adjudicating authority to conduct verification, categorically asserts that upon verification, it is found that the goods were received and utilised in Unit II as per GRN submitted by them for verification, and also that, upon verification, it is found that the services were received and also credit was availed as per the statement submitted during that particular period by the appellant; there is no reason to disbelieve that the said officer has not verified the receipt and utilization of the goods and services from the relevant documents including GR documents, inward-outward registers, input stock account registers etc to the extent it has been stated as verified in his report. On the contrary, we are of the view that it would be far-fetched to think that the jurisdictional Divisional Assistant Commissioner, when tasked with the responsibility of submitting a verification report and after being specifically instructed as to the relevant documents and records that he was required to verify, would then submit a report categorically averring that the goods and services have been received and utilized, without having verified the records and registers as instructed.

18. We find no reason to disbelieve the appellant's contention of having produced the relevant records for verification, merely because the Divisional Assistant Commissioner who has otherwise

conducted the verification of records as instructed has, instead of forwarding all the records and registers, chosen to forward only the screen shots of the GRNs, which documents would readily form a point of reference for the goods details of which were verified. We are inclined to believe that the appellant has produced the documents to the extent they have been stated by the jurisdictional Divisional Assistant Commissioner as submitted for verification, also for the specific reason that the appellant has no quarrel with the said verification report and is in fact relying on the said verification report to substantiate the appellant's contentions. In our view, the documents on which the credit was taken, stated by the jurisdictional Assistant Commissioner as produced for verification, and the GRN indicating receipt of the goods on such documents, which are also conceded by the learned adjudicating authority as accounted in the appellant's books of accounts, have indeed been produced for verification before the said Divisional Assistant Commissioner. It is only such production of the aforementioned documents and their verification, that has occasioned the said Assistant Commissioner to make a specific mention in the said verification report about the bills of entry and invoices which have not been produced. We therefore hold that the verification report submitted by the jurisdictional Divisional Assistant Commissioner, merits acceptance. In our opinion, had the learned adjudicating authority harboured any doubt that the Divisional Assistant Commissioner has not carried out the verification report as instructed, it was incumbent upon the learned adjudicating authority to have sought clarification, and if necessary, directed that the verification be done as instructed. We find that the learned adjudicating authority has thus erred in rejecting the verification report of the jurisdictional Divisional Assistant Commissioner and proceeding to deny the substantive benefit of cenvat credit, which even the learned adjudicating authority has otherwise found as not to be denied for mistakes in the invoices.

19. We also observe from the records that the averment of the appellant that both Unit I and Unit II of the appellant are located at Vadugappatti Village, Viralimalai adjacently and in the same campus, remains uncontroverted. It has been the consistent stand of the appellant that the final products of the two units are different and the inputs used in Unit I and Unit II are totally different. Under these circumstances, their averment that some of the vendors who supplied the inputs have inadvertently mentioned the address of the Unit I in the invoices for supply of goods to Unit II is an entirely plausible explanation. The learned adjudicating authority has also recorded that in respect of all such inputs that inadvertently mentioned the address of Unit I, to substantiate their contention that purchase orders were only placed by Unit II, copies of specimen purchase orders were also produced by the appellant during personal hearing. The learned adjudicating authority has also no cavil on the availment of credit on invoices that had mistakes, provided it is proved that the inputs have been received in the factory and utilised. We notice that the learned adjudicating authority has further found that the appellant has filed monthly ER-1 returns mentioning the consolidated amount of cenvat credit taken on the inputs and input

services during the month. The learned adjudicating authority, de hors the verification report, concedes that the appellant has produced evidences in the form of computer printouts taken from their computerized accounts which would be proof of having accounted for the receipt of the goods and services in question in their books of accounts.

20. That apart, it is seen that the show cause notice issued is consequent to the visit of the internal audit officers to the premises of the Appellant and subjecting their records to verification which is bound to have involved examination of their raw material receipt, issue and production records maintained in the appellant's factory. It stands to reason that the aforesaid uncontroverted facts would also have been the subject of verification during such Audit conducted and yet the genesis of the impugned proceedings, as stated in the show cause notice, is in the sole allegation chosen to be reported by Audit, namely the procedural breach of the appellant having taken credit on the documents that bore the address of Unit I.

21. Such being the facts and circumstances of this case, we find that the burden of proof of admissibility of cenvat credit in respect of the goods and services by reflecting the requisite details in the appellant's records has been initially discharged by the appellant. Under the said circumstances, the onus of proving that the goods have not been received and utilised as alleged in the show cause notice, has then shifted to the Department. Hence, in the absence of any allegation in the show cause notice, or a finding by the learned

adjudicating authority, of the said goods having been diverted based on positive evidence of such diversion; and in the absence of any allegation in the show cause notice, or a finding by the learned adjudicating authority, that the goods manufactured and cleared as reflected in the ER1 returns, have been produced utilizing inputs other than those accounted as received in the books of accounts of the appellant, based on positive evidence of such receipt of other necessary inputs, the said onus remains undischarged by the Department.

22. We also find that the learned adjudicating authority has grossly erred in holding that the burden of establishing the eligibility of admissibility of the credit on the invoices involves establishing the fact that no credit of such invoices was availed by the other unit which also belong to the same company. We find that neither was any such allegation/apprehension expressed in the show cause notice nor was the appellant asked to establish the burden of proof regarding the eligibility of credit on the invoices that are the subject matter of the show cause notice in the aforesaid manner as now recorded by the learned adjudicating authority in the impugned Order in Original as the acceptable method of discharge of the burden of proof regarding admissibility of cenvat credit. It is a settled principle of law that the assessee is required to meet only the allegations in the show cause notice and that the department cannot go beyond the allegations raised in the show cause notice. In **Commissioner of C. Ex, Bhubaneswar-I v. Champadany**

Industries Ltd, reported in 2009 (241) ELT 481 (SC), the Honourable Supreme Court in para 50 has held as under:

> "*50. Apart from that, the point on Rule 3 which has been argued by the learned counsel for the Revenue was not part of its case in the show-cause notice. It is well settled that unless the foundation of the case, is made out in the show-cause notice, Revenue cannot in Court argue a case not made out in its show-cause notice. {See : Commissioner of Customs, Mumbai v. Toyo Engineering India Limited - (2006) 7 SCC 592, para 16}*."

23. We therefore hold that the appellant is eligible to avail credit on the invoices that are addressed to unit I of the appellant, which substantive benefit cannot be denied for the said procedural lapse and that the verification report submitted by the jurisdictional Divisional Assistant Commissioner sufficiently proves that the goods and services have been received and consumed in the factory of the appellant to the extent verified by him. Hence, we find that the burden to prove the admissibility of the cenvat credit in respect of such goods and services cast on the appellant in terms of Rule 9(5) and Rule 9(6) of the Cenvat Credit Rules, 2004, stands sufficiently discharged.

24. As regards the plea of limitation, given that the show cause notice is dated 31.07.2014, covering the period from July 2009 to December 2013 for which the demand has been made, the notice has invoked the extended period of limitation to sustain the demand beyond the normal period. However, on a perusal of the details of credit taken as furnished in the annexures A to F of the show cause notice, which is stated as the basis of the demand in paragraph 10 of the said notice, it is seen that chronologically, the last date of

credit taken indicated in the said annexures is 27.02.2013, and is well beyond the normal period. Thus, it is evident that the entire demand pertains to the period beyond the normal period of one year.

25. While conceding that the appellant had regularly filed their ER-1 Returns disclosing the details of cenvat credit availed by them in the said statutory returns, the learned adjudicating authority has held that from the details so disclosed by them the department was in no position to ascertain the fact that they had actually availed cenvat credit on the basis of documents issued in the name of another person. He has further held that the fact of such availment of ineligible credit was brought to light only because of the verification conducted by the Internal audit unit and in the era of self-assessment the onus of taking legitimate credit has been passed on to the assessee. The learned adjudicating authority therefore finds that the appellant has deliberately withheld and suppressed material facts with intent to avail ineligible credit and thereby to evade payment of duty and that the extended period of limitation is rightly invoked.

26. At this juncture, it would be apposite to notice the decision of a coordinate bench of the tribunal in **Accurate Chemical Industries v CCE, Noida, reported in 2014(300) ELT 451 (Tri-Del),** wherein it was held as under:

> ***" 7.1*** *Though with effect from 1-10-1996, self-assessment has been introduced and the monthly ER-1 return filed by an assessee are not required to be assessed by the Range Superintendent (RO), in terms of the following instructions issued by the Central Board of Excise & Customs (CBEC) not only every ER-1 return filed by an*

assessee is required to be scrutinized by the RO for correctness of rate of duty applied to the goods cleared, arithmetical accuracy of duties/amounts dues and payable; Cenvat credit availment, valuation etc., this scrutiny must be completed within 3 months and the returns of the units whose annual duty payment is Rs. 1 crore to Rs. 5 crores and more than Rs. 5 crores, are also to be cross checked by the Assistant Commissioner and Additional Commissioner, respectively.

(1) Circular No. 249/83/96-CX., dated 11-10-1996 (para 3);

(2) Circular No. 311/27/97-CX., dated 15-4-1997 (regarding maintenance of register of scrutiny and reporting progress of scrutiny of ER-1 returns in monthly Technical Report being sent to the Board.)

(3) Circular No. 818/15/2005-CX., dated 15-5-2005 issued by C.B.E.& C. under Rule 12(3) of Central Excise Rules, 2002 prescribing two stage scrutiny of ER-1 and ER-3 returns - preliminary scrutiny and detailed scrutiny as per detailed check list prescribed for this purpose.

7.2 From the above Circulars of the C.B.E. & C. regarding scrutiny of ER-1 returns, it is clear that the returns filed by an assessee are required to be subjected to detailed scrutiny in course of which the concerned officer can call for the documents from the assessee wherever necessary for scrutiny. Therefore in this case, if the concerned Range officer/Assistant/Deputy Commissioner or concerned Additional Commissioner had checked the returns, the short payment would have been immediately detected as, as observed by the Commissioner in para 4.5 of the impugned order, even the registration certificate of the appellant mentioned them as a unit of Accurate Transformers Ltd., and in all the documents of the appellant, the transfer of goods from the appellant to Accurate Transformer Ltd. had been reflected as inter unit transfer. Neither there is any allegation nor evidence to prove that there was some collusion between the appellant and the Jurisdictional Central Excise officers. The short payment was detected when during visit by the audit team, the records maintained by the appellant and made available by them to the audit officers were examined by them, -something which should have been done by the Jurisdictional Range

Officers and Divisional Assistant Commissioner/Deputy Commissioner much earlier. The assessee cannot be penalized by invoking extended period under proviso to Section 11A(1) for demand of duty and penal provisions of Section 11AC for indolence on the part of the jurisdictional Central Excise officers. Moreover Apex Court in a series of judgments -

CCE v. Champher Drugs & Liniments reported in 1989 (40) E.L.T. 276 (S.C.);

Padmini Products v. Collector reported in 1989 (43) E.L.T. 195 (S.C.);

Pushpam Pharmaceuticals v. CCE reported in 1995 (78) E.L.T. 401 (S.C.);

Anand Nishikawa Co. Ltd. v. CCE, Meerut reported in 2005 (188) E.L.T. 149 (S.C.);

Continental Foundation Jt. Venture v. CCE, Chandigarh reported in 2007 (216) E.L.T. 177 (S.C.)

has held that something positive other than mere inaction or non-payment of duty is required for invoking extended period under proviso to Section 11A(1) and that suppression means failure to disclose full information with intent to evade the payment of duty and mere omission to give certain information is not suppression of fact unless it is deliberate with intention to evade the payment of duty. The above condition for invoking extended period prescribed in these judgments is not satisfied in this case."

27. In our view, allowing the assessee to self-assess the tax is a mere facility extended to the assessee. That in no way detracts or dilutes the statutory responsibility of the jurisdictional central excise officers to ensure correctness of the assessment and duty payments made, which duty payments would include, not only the payment of duty in cash, but also the payment utilizing cenvat credit from the cenvat credit balance available as per the records maintained by the assessee. The aforesaid responsibility of the jurisdictional central

excise officers to scrutinize the returns filed reflecting the information of cenvat credit taken and the failure to take up the information for scrutiny is not to be held to the detriment of the appellant by invoking of the extended period of limitation. In view of the mandatory responsibilities cast on the central excise officers by various circulars, they cannot abdicate responsibility by stating that the assessee has not responded to their letters seeking information. The mandate of the statute, as laid down in Section 14 of the Central Excise Act, 1944, empowers the jurisdictional central excise officers to issue summons requiring any person to give evidence or produce records etc., and can be resorted to by the said officers in the course of performance of their official duties as per extant Departmental instructions, if it so becomes necessary.

28. The learned adjudicating authority has further held that on the basis of the details submitted by the appellant in their returns it is not possible for the scrutinizing officer to determine the eligibility of the cenvat credit which was disclosed in their return based on self-assessment and since the returns show only the cumulative details of cenvat credit availed, the department is in no position to ascertain the nature of documents based on which such credit was taken.

29. The aforesaid findings of the learned adjudicating authority cannot be countenanced for the reasons elaborated below. In this regard, reference to the decision of this Tribunal in **CCE, Indore v Medicaps Ltd, reported in 2011(24) STR 572 (Tri-Del)** is appropriate. In the said decision it has been held as under:

> *4. We find no merits in the above contention of the revenue. Admittedly the credit availed by the assessee was reflected in the monthly returns. If there is no column in the monthly return to show the nature of service on which the credit was availed, the assessee cannot be blamed for not disclosing the said fact. For invoking the longer period of limitation, there has to be a suppression or mis-statement with an intent to evade payment of duty. When the respondents have reflected the amount of credit availed by them in their monthly returns, it cannot be said that there was any positive act of suppression on misstatement on their part. As such, we are of the view that Commissioner (Appeals) has rightly held a part of the demands as barred by limitation.*

30. We are of the view that when the returns prescribed provide only for information of consolidated availment of cenvat credit to be furnished, it would be all the more reason for a jurisdictional central excise officer entrusted with the duty to safe guard Government Revenue by verifying and scrutinizing the information being furnished in the returns by the assessee, to be diligent and inquire into the details of such cenvat credit taken and utilized within the mandated period prescribed for such scrutiny as laid down in the Department circulars and instructions in order to ensure correctness of the assessment and ensure complete remittance of the requisite duty. In the instant case, the extended period sought to be invoked is from July 2009 and even before the audit officers visited the appellant's factory, there was ample opportunity for the jurisdictional central excise officers to carry out their mandated responsibility and detect any irregularities. In the light of the ratio of the decisions stated supra, we are of the view that the learned adjudicating authority has erroneously invoked the extended period of limitation and therefore we hold that the entire demand is wholly barred by

limitation. Since the few invoices that the Divisional Assistant Commissioner has recorded as not produced for verification pertains to the period beyond the normal period and in respect of which the GRNs are conceded as having been produced and considering also the fact that in para 15 of the show cause notice it is stated that the proposal for demand itself is based on copies of these documents provided by the Appellant, their non-production for verification pales into insignificance and is condoned.

31. We find that the proposal in the show cause notice pertaining to imposing of penalty on the Appellant is on the specific allegations of wilful misstatement/suppression of facts with intent to evade payment of duty for the entire period, invoking provisions of Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944, which proposal has found favour with the learned adjudicating authority who has upon finding that the extended period of limitation is invokable stated that the appellant is also liable for penal action as proposed. Finding thus, the learned adjudicating authority has imposed a penalty equivalent to the duty demand confirmed, invoking the aforementioned provisions.

32. In light of our findings recorded supra, we are of the view that the allegation relating to wilful mis-statement/suppression of facts with intent to evade payment of duty is not sustainable and consequently extended period is not invocable and mandatory penalty is also not liable to be imposed.

33. In view of the foregoing facts borne out from the records and the discussions and findings stated above, we find that the appellant

succeeds in its Appeal on merits as well as on its plea against invocation of extended period of limitation. The demand made in the impugned order in original being untenable, the demand of consequential interest and the penalty imposed also do not sustain. Hence the impugned order in original is set aside and the appeal is allowed with consequential relief, if any, in law.

(Order pronounced in the open court on 28.11.2024)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

psd