CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

SINGLE MEMBER

Excise Appeal No. 52215 of 2019

[Arising out of Order-in-Original No. RPR/EXCUS/000/COM/027/2019 dated 31.05.2019 passed by the Principal Commissioner of Central Excise, Raipur]

M/s Ashirwad Ispat Udyog **Appellant**
36/37, Sector-C, Urla Industrial Complex
Raipur (C.G)

Versus

Principal Commissioner of Central, Raipur **Respondent**
Commissioner of GST, Customs & Central Excise, Bhopal

With

Excise Appeal No. 52216 of 2019

[Arising out of Order-in-Original No. RPR/EXCUS/000/COM/027/2019 dated 31.05.2019 passed by the Principal Commissioner of Central Excise, Raipur]

Shri Basant Shrivastava, **Appellant**
M/s Ashirwad Ispat Udyog,
36/37, Sector-C, Urla Industrial Complex
Raipur (C.G)

Versus

Principal Commissioner of Central, Raipur **Respondent**
Commissioner of GST, Customs & Central Excise, Bhopal

With

Excise Appeal No. 52217 of 2019

[Arising out of Order-in-Original No. RPR/EXCUS/000/COM/027/2019 dated 31.05.2019 passed by the Principal Commissioner of Central Excise, Raipur]

Shri Vijay Chand Bothra, **Appellant**
M/s Ashirwad Ispat Udyog,
36/37, Sector-C, Urla Industrial Complex
Raipur (C.G)

Versus

Principal Commissioner of Central, Raipur **Respondent**
Commissioner of GST, Customs & Central Excise, Bhopal

And with

Excise Appeal No. 52538 of 2019

[Arising out of Order-in-Original No. RPR/EXCUS/000/COM/027/2019 dated 31.05.2019 passed by the Principal Commissioner of Central Excise, Raipur]

M/s Ashirwad Ispat (RYP) Pvt Ltd. , **Appellant**
36/37, Sector-C, Urla Industrial Complex
Raipur (C.G)

Versus

Principal Commissioner of Central, Raipur **Respondent**
Commissioner of GST, Customs & Central Excise, Bhopal

Appearance
Shri A K Prasad, Advocate for the appellant

Ms. Tamana Alam, Authorized Representative for the respondent

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

Date of Hearing/ Decision: 17.01.2020

FINAL ORDER NOs. 50101-50104 /2020

Per Ashok Jindal:

The appellants are in appeal against the impugned order wherein Cenvat credit has been denied to them and consequently the same has been demanded and penalty has been imposed on the appellants.

2. The facts of the case are that M/s Ashirwad Ispat Udyog issued invoices to M/s Ashirwad Ispat RYP Pvt Ltd. During the course of investigation goods were found physically excess as compared with statutory record in the stocks.

Therefore, the proceedings were initiated against the appellant for excess goods found to deny Cenvat credit to the appellant and to impose penalty on the other appellants.

3. In earlier round of litigation, the Tribunal has passed the following order;

> " 3. Further, I find that the allegation against M/s Ashirwad Ispat (RYP) Pvt. Ltd. is that they have received goods on fake invoice/documents issued by Ashirwad Ispat Udyog. The contention of the appellant is that they have produced documents for verification before the adjudicating authority during the course of investigation itself but the adjudicating authority has not examined those documents in detail. In that circumstances, I hold that the matter need examination at the end of the adjudicating authority to verify the documents produced by the appellant and to give detailed findings on those documents. Therefore, the matter is remanded back to the adjudicating authority for de novo adjudication keeping all issues open. It is pertinent to mention here that the appellant shall appear before adjudicating authority on or before 31.3.2018 to fix the date to be fixed for final hearing and thereafter the adjudicating authority shall decide the issue within three months.
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> 4. In these terms, the appeals are disposed of by way of remand. Cross objections are also stand disposed of in above terms."

4. In remand proceedings the learned Commissioner passed the impugned order by denying Cenvat Credit to the appellant and recovery thereof and imposed penalty on other appellants. Against the said order appellant is before me.

5. The learned Counsel for the appellant submits that adjudicating authority has not followed the direction of this Tribunal and had gone on some other issues which were not in question in remand proceedings and held that

Cenvat credit is not available. He also argued that the impugned Show Cause Notice for the impugned demand is barred by limitation. And said issue has not been considered by the adjudicating authority in true spirit. Therefore, on limitation itself the impugned order is to be set aside.

6. On the other hand learned Authorised Representative supported the impugned order and submits that at the best, the matter can be remanded to the adjudicating authority for fresh consideration of the Tribunal's earlier remand order dated 05.02.2018.

7. Heard the parties and considered the submissions.

8. I find that during the course of proceedings before the adjudicating authority, the appellant has taken a ground that on the same invoices to deny Cenvat credit for the period March to April, 1994, a Show Cause Notice was issued to the appellant on 01.07.1994 and on the same invoices further Show Cause Notice has been issued to the appellant on 28.02.1996 to deny Cenvat credit on some other ground. As the availment of Cenvat Credit by the appellant was in the knowledge of the Department vide Show Cause Notice dated 01.07.1994, therefore, the impugned Show Cause Notice is barred by limitation on the said argument the adjudicating authority has given the finding as below;

> " 12. I find that, vide their explanation dated 17.05.2019, Noticee has pleaded that the present show cause notice issued vide C. No. V(Ch. 72) 15-93/96/Adj/4718 dated 28.02.1996, proposing disallowance of Modvat credit of Rs. 4,69,855/-, pertaining to the period from March to April, 1994 by invoking extended period, but the Superintendent of Central Excise, Raipur had earlier issued an identical show cause notice C. No. R-III/SA/RYP/94-95/1102 dated

> 01.07.1994 within normal period, which was made answerable to the Assistant Collector, Central Excise, Raipur for recovery of duty on the same issue for the period March, 1994. Noticees submit that the said notice was dropped vide O-I-O No. 70/ADJ/2004 dated 25.05.2004 by the Deputy Commissioner of Central Excise, Raipur. The Noticee therefore contents that once the matter has been finalised on merits, Department cannot initiate proceedings in the same matter and there is no provision in the Act under which the issue could be reopened by way of second show cause notice.
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> 13. On this count, I find that the Noticees are correct in a way to say that an earlier show cause notice has been issued to Noticee No. 4 for denial of Modvat credit in respect of some of the impugned documents. But, the earlier notice dated 01.07.1994 was issued on the ground that the consignments from manufacturer were split by the trader (Noticee No. 1), which was improper and secondly, there was addition in the name of goods, procured and sold by Noticee No. 1. The instant demand cum show cause notice dated 28.02.1996 was issued pursuant to the inquiry with Noticee No. 1 and recovery of incriminating records from them. When analysed, it is seen that the allegations in second case has arisen on revelation of illicit activity being carried out by Noticee No. 1 and this case had revealed fresh, additional and incriminating evidences, which were not available to the inquiry officer and the adjudicating authority of the first case.
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> Therefore, to draw similarity on the two demand is improper and not acceptable. The case laws cited by the Noticees are also distinguishable on the ground that facts and evidences of the two cases are different and distinct. The instant demand, therefore, stands validated on this ground."

9. On going through the observations made by the learned adjudicating authority, I find that adjudicating authority has not denied the fact that on the same facts a Show Cause Notices as already been issued to the appellants on 01.07.1994 to deny Cenvat credit. Further, on the same invoices the impugned show cause notice has been issued to the appellant on 28.02.1996.

The impugned show cause notice is barred by limitation as the fact of availment of Cenvat credit was not in the knowledge of the Revenue while issuing Show Cause Notice dated 01.07.1994. In that circumstances, the impugned show cause notice is not sustainable, consequently, the demand raised against the appellant to deny Cenvat credit is not sustainable. Therefore, without going into the merits of the case, I hold that the impugned proceedings are barred by limitation, consequently, the impugned order is set aside and appeals are allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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