CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 51177 of 2020-SM

(Arising out of order-in-appeal No. 291 (CRM) CE/ JDR/2020 dated 24.09.2020 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur).

M/s Annapurna Industries **Appellant**
Plot No. F-381 (B)
MIA, Basni Phase-II
Distt – Jodhpur, Rajasthan.

VERSUS

Commissioner, Central Goods and Service Tax, **Respondent**
G-105, New Jodhpur Industrial Area
Jodhpur (Rajasthan).

APPEARANCE:

Shri O. P. Agarwal, Advocate for the appellant
Shri Pradeep Gupta, Authorirsed Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50299/2022

DATE OF HEARING: 08.10.2021
DATE OF DECISION: 30.03.2022

ANIL CHOUDHARY:

The issue involved in this appeal is whether appellant have rightly taken cenvat credit of service tax paid on outward transportation service (GTA) used for removal of goods, whether the demand is hit by limitation.

2. The appellant is a manufacturer of S.S. Patta, S.S. Circles, S.S. Utensils, S.S. Schedule etc., which are dutiable. The appellant is registered with the Department, regularly filed the periodical returns and also makes compliances.

3. The facts of the case, in brief, are that the appellant is engaged in manufacturing of S.S. Utensils falling under Chapter 73 of the Schedule to CETA, 1985 and were availing cenvat credit of duties paid on inputs and service tax paid on input services.

4. During the course of audit of the appellant, the auditors noticed that the appellant has cleared their excisable goods after paying central excise duty on assessable value under Section 4 of the Central Excise Act, 1944. The appellant had sold the goods from their factory premises to customers and were paying service tax on the outward freight incurred by the appellant under reverse charge mechanism. The appellant had availed cenvat credit of Rs. 93,873/- of such service tax paid under reverse charge mechanism on GTA services (outward transportation of goods by road from factory premises to customers) during the period from April; 2016 to March; 2017. The revenue entertained a view that such GTA services was not covered within the definition of input services as only outward transportation upto the place of removal was covered within the term of input services and in this case, factory gate was the place of removal from where the appellant had sold their goods on payment of duty. Therefore, vide notice dt. 23.09.2019, cenvat credit was proposed to be disallowed and penalties were proposed to be imposed. Vide OIO No. 16/2020-ST dt. 30.06.2020, the learned adjudicating authority has disallowed the

cenvat credit and has also imposed equal penalty, by invoking extended period of limitation, after holding that the appellant have suppressed the facts of availing of such credit from the department with intent to evade payment of tax. Ld. Commissioner (Appeals) CGST, Jodhpur has vide his OIA No. 291/CRM/CE/ JDR/2020 dt. 24.09.2020 upheld the OIO and rejected the appeal filed by the appellant. The appellant is in appeal before this Tribunal against this impugned order-in-appeal.

5. Learned counsel for the appellant submits that the appellant had not suppressed any facts from the department with intent to evade payment of tax. He would submit that the cenvat credit was taken in statutory records and were duly mentioned in ER-1 return filed by the appellant for the respective months. The department had also noticed the same at the time of conducting audit of records of the appellant. He further submits that the cenvat credit was taken under bonafide belief. He also relies on decision given by the Hon'ble Madhya Pradesh High Court in the case of **CCEST Vs. ZYG Pharma Ltd** reported at **2017 (358) ELT 101 (M.P.)** in which their Lordship has held that since availment of inadmissible cenvat credit was discovered during the course of audit and the assessee had been submitting monthly returns showing availment of subject credit and since such returns do not require listing of goods or services on which credit taken, therefore, the assessee cannot be held guilty of suppression of facts with intent to evade duty, hence extended period was held to be not invokable.

6. Learned Counsel further relies on decision given by Division Bench of this Tribunal in the case of **M/S Ultratech Cement Ltd. Vs. CCE, Kutch vide Final Order No. A/10373/2019 dt. 25.02.2019** on

identical facts in which it was held the issue was not free from doubt and right from introduction of cenvat credit scheme under Cenvat Credit Rules, the outward GTA was the matter under litigation and for that reason the Government had to come with clarification, thereafter the matter was subject to various litigation before Tribunal, Hon'ble High Courts and Hon'ble Supreme Court, therefore, no malafide intention can be attributed to the appellant, therefore, demand was held to be not sustainable on limitation.

7. Learned Authorised Representative reiterated the findings of the impugned order and submitted that the impugned order in appeal calls for no interference.

8. Having considered the rival contentions and on perusal of record, I find that the appellant have maintained proper records of the transactions and the fact of taking credit. Further, the appellant has also filed periodical returns regularly. Admittedly, show cause notice has been issued in September, 2019 disputing taking of cenvat credit on outward GTA for the period April, 2016 to March, 2017. During the course of argument, learned Counsel have also filed copy of the excise return in Form ER-1, wherein they have reflected the cenvat credit taken in the relevant columns alongwith other details as required. Thus, no case of suppression, mis-representation or fraud is made out against the appellant. Further, the Tribunals, High Courts and even the Supreme Court have taken divergent views on the subject of allowability of credit on outward GTA. Finally, the CBIC has issued a circular in the year, 2018 mentioning four rulings of Hon'ble Supreme Court in Roofit, Ultratech, Ispat Industries, etc. wherein divergent views have been

taken and thereafter have given instruction to the Field Officer to take a pragmatic view in the matter of allowability of outward GTA. Thus, evidently the issue was open to more than one interpretation and thus the dispute raised by the Department is debatable and subject to different interpretation. In this view of the matter, I hold that the extended period of limitation is not available to Revenue. Accordingly, I hold the show cause notice is hit by limitation.

9. In view of my findings, I allow the appeal and set aside the impugned order. The appellant is entitled to consequential benefits, in accordance with law.

(Pronounced on 30.03.2022).

(Anil Choudhary)
Member (Judicial)

Pant