CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No.50892 of 2021 (SM)

(Arising out of Order-in-Appeal No.99 (SM)CE/JPR/2021 dated 18.06.2021 passed by the Commissioner (Appeals), Customs and Central Goods & Service Tax, Jaipur]

M/s. Alliance Polysacs Pvt. Ltd. **Appellant**
Khasra No.374, Manoharpur-Khora Road,
Village –Surana, Tehsil-Shahpura,
Jaipur.

VERSUS

Commissioner of Central Excise & **Respondent**
Central Goods & Service Tax Commissionerate,
Jaipur.

APPEARANCE:

Ms. Priyanka Goel, Advocate for the appellant.
Shri Ishwar Charan, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO.50497/2022

DATE OF HEARING/DECISION: 30.05.2022

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this appeal is whether the show cause notice is barred by limitation and the second issue is whether the appellant had rightly taken the cenvat credit on the installation of pre-fabricated structures during the period September, 2009 to December, 2010.

3. The brief facts are that the appellant is a manufacturer of P.P. Bags, having their factory located at Jaipur. The appellant had engaged M/s.

Supertech (India) Pvt. Ltd., New Delhi, for erection and installation of pre-engineered steel building (PSB), which was to be used for modernisation. The appellant took cenvat credit on the invoices of M/s. Supertech (India) Pvt. Ltd., which were for supply of the pre-fabricated structures and also for their installation. The appellant had taken the credit of invoices dated 25.09.2009, 02.11.2009 and 06.02.2010, being the service tax on the services received, totalling Rs.12,16,698/-. The appellant had duly recorded the complete transactions in their records including the cenvat credit registers. As per show cause notice dated 5.10.2018, it was during the course of audit, the Revenue found that the appellant had taken credit on the aforementioned invoices, and the said credit was not permissible in terms of the provisions of Rule 2 (l) of the Cenvat Credit Rules, 2004, w.e.f. 1.7.2012, wherein Exclusion Clause was introduced in Rule 2(l) and Clause A(a) provides, " that the, " service portion in the execution of a works contract and construction services for construction or execution of works contract of a building or a civil structure or a part thereof is not permissible or excluded, w.e.f.1.07.2012 vide notification no.28/2012-CE (NT). It is further alleged in the show cause notice that the appellant have shown the utilisation of such credit in Jan. 2014 in their ER-1 Return. Accordingly, as per Revenue the said credit was not available and hence, the show cause notice is rightly issued by invoking the extended period of limitation. The show cause notice was adjudicated on contest by the Asstt. Commissioner, who confirmed the proposed disallowance of cenvat credit of Rs.12,16,698/- along with interest and equal amount of penalty.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who was pleased to dismissed the appeal, both on merits as well as on limitation.

5. Being aggrieved, the appellant is before this Tribunal.

6. Ld. Counsel for the appellant, *inter alia,* urges that the Exclusion Clause came in Cenvat Credit w.e.f. 1.7.2012. As the transaction is before the said date, as well as the invoices are also before the said date, the Exclusion Clause does not apply in the facts of the present case.

7. Further, as the transaction has been duly recorded in the books of accounts and cenvat credit register in the ordinary course of business, there is no case of concealment made out. Accordingly, there is no basis for invocation of extended period of limitation. Accordingly, she prays for allowing their appeal.

8. Ld. Authorised Representative for the respondent/Department relies upon the impugned order.

9. Having considered the rival contentions, I find that as the transactions in question is before 1.7.2012, when Exclusion Clause was introduced in Rule 2 (l), thus, the transaction in question does not fall within the mandate of Exclusion Clause. Accordingly, the show cause notice is wholly mis-conceived. Further, I find no case for invocation of extended period of limitation. Accordingly, this appeal is allowed and the impugned order-in-appeal is set aside.

(Order dictated & pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Ckp