IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 55683 of 2013 SM

[Arising out of Order-In-Appeal No. 193/RPR-I/2012 dated 7.11.2012 passed by Commissioner of Customs & Central Excise (Appeals) Raipur (CG)]

M/s. Agarwal Vidyut **Appellant**

Vs.

Commissioner of Central Excise and ST, Raipur **Respondent**

Appearance:

Shri Abhas Mishra, Advocate for the Appellants
Shri Dharam Singh, AR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing /Decision: 09.02.2017

ORDER NO . FO/ 51843 /2017-(SM)

Per Ms. Archana Wadhwa :

After hearing both sides duly represented by Shri Abhas Mishra, learned advocate appearing for the appellant and Shri Dharam Singh, learned DR appearing for the Revenue, I find that the appellant is engaged in the manufacture of steel ingots and was availing the Cenvat credit of duty paid on inputs and capital goods in terms of Cenvat Credit Rules, 2004.

2. During the period 2005-06 to 2007-08, the appellant availed the cenvat credit in respect of various iron and steel products like angles, channels, beams, plates, joists, rounds which according to the appellant stand used in the manufacture of various capital goods like boiler, turbo generator, electro static precipitators, ash storage tank and EOT crane stand etc. The said credit was availed by them by reflecting the same in the cenvat credit and the capital goods and component manufactured out of the said inputs were duly entered in the daily stock account and invoices were issued for captive consumption in terms of notification No. 67/95-CE dated 16.3.1995.

3. As a result of Audit objection, that the credit was not available to the appellant in respect of said items, Show cause notice was issued to them on 5.7.2010, proposing denial of credit and imposition of penalty. The said notice was contested by the appellant on merits as also on limitation. However, the lower authorities passed the impugned orders confirming the demands and imposition of penalties. Hence, the present appeal.

4. After hearing both the sides, I note that the appellant had taken a categorical stand before the lower authorities that the said iron and steel items were used by them in the manufacture of capital goods.

The Chartered Engineer's certificate also stand produced before me. The lower authorities have not accepted the said stand of the assessee on the sole ground that they have not produced any evidence on record as regards the use of items in the fabrication of capital goods. The Hon'ble Supreme Court in the case of ***Commissioner of Central Excise, Jaipur vs. Rajasthan Spinning & Weaving Mills Ltd. [2010 (255) ELT 481 (SC)]*** has held that steel plates and MS channels used in fabrication of chimney for diesel generating set are eligible, cenvatable items. By following the said decision, Tribunal in the case of ***Lafarge India Pvt. Ltd. vs. CCE, Raipur [2016-TIOL-2875-CESTAT-DEL]*** has held that use of various steel items for fabrication of capital goods and their accessories inside the manufacturers premises are eligible for credit by applying 'user test'.

5. Apart from the above, I also find that the demand is squarely barred by limitation having been raised for invoking the longer period. The dispute for the availability of various iron and steel items has been the subject matter of various decisions of the Tribunal and even after the Revenue's stand that the same were not used in the fabrication of capital goods is accepted, the longer period would not be applicable. The Larger Bench decision of the Tribunal in the case of ***Vandana Global Ltd. vs. Commissioner [2010 (253) ELT 440 (Tri-LB)]*** was considered by Hon'ble Gujarat High Court in the case of ***Mundra Ports and Special Economic Zone Ltd. vs. CCE & Cus***

[2015 (04) LCX 0197] and stands virtually over-ruled. Infact I note that an identical issue of limitation was considered by the Tribunal in the case of ***Petropole India Ltd. vs. CCE Jaipur I [Final Order No. A/51917/2016 Ex(DB) dated 18.5.2016*** and it was observed as under:

> *5. Apart from the merits of the case, we find the demand to be barred by limitation. Admittedly, the show cause notice stands issued on 12.01.2007 , for the period April, 2005 to October, 2005. The lower Authorities have invoked the extended period only on the sole ground that the appellant was aware of the fact that the credit is not admissible and still, they took the credit. We find no appreciable reasons for observing so. Admittedly, the credit was being availed after reflecting the inputs in the statutory RG-23-D Part I and Part-II records. The fact of availment of credit was also being reflected in the statutory returns being filed with the Revenue. Non-disclosure of a fact for which there is no column in the records or in the returns, does not ipso facto lead to the conclusion that such non-disclosure is with malafide intention, especially, when there is no legal obligation on the part of the assessee to disclose a particular fact. Apart from that, we find that during the relevant period, there were decisions in favour of the assessee, which came to be reversed only with the declaration of the law by the decision of the Larger Bench of the Tribunal in the case of Vandana Global Ltd.(supra). As such, it is well settled law that if during the relevant period, the decisions of the higher authorities are in favour of the assessee and the law was reversed only subsequently, by a Larger Bench or by any*

other decision, no malafide can be attributed to the assessee and longer limitation period would not be available to the Revenue."

6. Inasmuch as the demands stand raised by invoking the longer period of limitation and by appreciating the fact that law was not clear during the relevant period as also by appreciating the fact that the entire credit was being availed after reflecting the same in the statutory records and after filing the due returns, I am of the view that demand is hit by bar of limitation. In view of the above discussion, the impugned order is set aside and appeal is allowed with consequential relief.

(pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

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