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

Service Tax Appeal No. ST/819/2011-ST[SM]
[Arising out of Order-In-Appeal No. 20/ST/Alld/2011 dated: 23.02.2011 passed by CCE Allahabad]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

M/s. K M Sugar Mills Ltd. ...Appellant

Vs.

C.C.E. Allahabad …Respondent

Appearance:
Mr. Bipin Garg, (Advocate) for the Respondent
Mr. G R SIngh, DR for the Appellants

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing. 09.07.2015

Final Order No. 54307 /2015

Per S K Mohanty:

This appeal is directed against the impugned order dated 23.02.2011 passed by the Commissioner of Central Excise (Appeals), Allahabad, upholding the adjudged demand confirmed in the original order.

2. Brief facts of the present case are that the appellant is engaged in the manufacture of VP Sugar and Molasses, falling under Chapter 17 of the Central Excise Tariff Act, 1985. The factory of the appellant was audited by the Central Excise Department from 15.01.2007 to 19.01.2007. During the course of audit, it was detected that the appellant had taken cenvat credit amounting to

Rs. 2,01,231/- without proper/valid documents. On the basis of such audit objection, the Jurisdictional Central Excise Authorities initiated show case proceedings against the appellant for recovery of wrongly availed cenvat credit and for imposition of penalty. The SCN issued in this regard culminated in adjudication order dated 30.03.2010, wherein demand towards cenvat credit was confirmed alongwith interest and penalties under Rule 15(1) and 15(2) were imposed against the appellant . In appeal, the ld. Commissioner (Appeals) has upheld the adjudged demand, excepting the penalty imposed under Rule 15(1) *ibid.* Confirmation of the cenvat demand and imposition of penalty under Rule 15(2) *ibid* are the subject matter of the present dispute.

3. I have heard the Ld. Counsel for both the sides and perused the records.

4. I find that no specific allegations have been made in the SCN as to why the invoices on which cenvat credit has been taken by the appellant, should not be considered as proper/ valid documents and how the provisions of Rule 3 & 4 of the Cenvat Credit Rules, 2004 have been contravened. The SCN has been issued solely based on the objections raised by the Audit Wing during their visit to the factory of the appellant in the month of January 2007. Further, the SCN has not specifically alleged the involvement of the appellant in any fraudulent activities concerning suppression, misstatement, collusion, with intent to avail the cenvat credit. Rather, for invoking extended period of limitation, the SCN has only alleged that the assessee has never informed the department regarding the availment of cenvat credit and the said fact only came to the notice

of the department during the course of audit of records. In absence of any specific allegation of the ingredient mentioned in the proviso to Section 73(1) of the Finance Act, 1994, in my opinion, the extended period cannot be invoked, justifying confirmation of the demand beyond the period of one year. In this context, I find that the judgments cited by the Ld. Advocate in the case of **M/s Nestle India Ltd. vs CCE Chandigarh reported in 2009 TIOL 26-SC-Cx, Tamil Nadu Housing Board vs CCE Madras reported in 1994 (74) ELT 9 (SC) and Continental Foundation Jt. Venture vs CCE Chandigarh-I reported in 2007 (216) ELT 177 (SC)** are applicable to the facts and circumstances of the present case regarding non-invocation of the extended period of limitation for confirmation of the duty demand and for imposition of equal amount of penalty. The judgment of the Hon'ble Supreme Court in the case of **Mehta & Co. (supra)** cited by the Ld. DR is distinguishable from the facts and circumstances of the present case inasmuch as suppression against the respondent (Mehta & Co.) was proved by the Central Excise Department by advcing tangible evidences. The Hon'ble Apex Court have held that in case of suppression, when the facts were known to the Department, the SCN can be issued within the period of 5 years. Contrary is the situation in the present case, inasmuch as though suppression, misstatement etc, have been alleged by the authorities below, but no tangible evidences were produced to prove that the appellant has indulged in the activities, concerning suppression, willful misstatement with the intention to evade payment of service tax. In absence of any specific proof by the authority below that the ingredients mentioned in the proviso to

Section 73 *ibid* are present in this case, the period of limitation for issuance of the SCN should be confined to one year from the date of knowledge, which in the present case is 15/01/2007, when the audit wing has raised the objection regarding irregular availment of cenvat credit. Since the SCN has not been issued within the period of one year and the onus of proving that the appellant has indulged in malafied activities with intent to defraud the Revenue has not been satisfied, I am of the view that the SCN issued on 8.8.2008 is clearly barred by limitation of time.

5. In view of above and in view of the judgment relied by the Ld. Advocate, I am of the opinion that the impugned order is liable to be set aside on the ground of limitation. Therefore, the same is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

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