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

Excise Appeal No. E/424/2009-E[SM]
[Arising out of Order-In-Appeal No. 739/CE/Appl./Jal./2008 dated 12.11.2008 passed by CCE (Appeals) Jalandhar]

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

M/s IFCA Bottling Co. Ltd. ...Appellant

Vs.

C.C.E. Jammu …Respondent

Appearance:
Mr. Alok Yadav (Advocate) for the Appellant
Ms. Ranjana Jha, DR for the Respondent

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

Date of Hearing/ Decision. 17.08.2015

Final Order No. 54308 /2015

Per S K Mohanty:

This appeal is directed against the impugned order dated 12.11.2008 passed by Commissioner (Appeals), Central Excise, Chandigarh.

2. Brief facts of the case are that the appellant is a job worker of M/s Hindustan Coca Cola Beverages. The capital goods required for undertaking the job work activities were directly sent by the principal manufacturer M/s Hindustan Coca Cola Beverages to the appellant from the premises of the manufacturer of those capital goods. Based on the invoices issued by the manufacturer of those capital goods, the appellant took cenvat credit of Central Excise duty paid on those invoices. Taking of cenvat credit was disputed on the ground that the provisions of Rule 3(4) and Rule 3(5) of the Cenvat Credit Rules have

not been complied with inasmuch as the appellant is not the consignee of those goods. The SCN issued in this regard was adjudicated by the Additional Commissioner of Central Excise vide order dated 13.07.2007, holding that the appellant is eligible for the cenvat credit and non-observance of the procedural formalities cannot take away the substantive right for availment of cenvat credit. Feeling aggrieved with the said adjudication order, the Department has preferred appeal before the Commissioner (Appeals). The appeal was disposed of in favour of the Revenue. Hence this present appeal is before this Tribunal.

3. The Ld. Advocate appearing for the appellant submits that the Central Excise duty shown in the invoices was taken as cenvat credit by the appellant and the name of the appellant is also endorsed in the disputed invoices. He further submits that the principal manufacturers M/s Hindustan Coca Cola Beverages, has not taken the cenvat credit in respect of the said invoices, and as such, there is no scope of taking irregular cenvat credit by the appellant. It is his submission that the endorsement in the invoices for the purpose of taking cenvat credit is in conformity with the statutory provisions. In this context, he relies on the decision of this Tribunal in the case of **Inder Poly Fabs (P) Ltd. vs CCE Chandigarh reported in 1998 (99) ELT 420 (Tri).** He further submits that the Show Cause proceedings in the present case are barred by limitation of time inasmuch as taking of cenvat credit on the disputed invoices were known to the Department way back in 2003, whereas the SCN was issued in 2006, which is beyond the period of one year prescribed in the statute.

4. On the other hand, the Ld. Jt. CDR appearing for the respondent submits that since the requirement of Rule 3(4) and Rule 3(5) of the Cenvat Credit Rules have not been complied with by the appellant, the cenvat credit is not permissible, and as such, the Commissioner (Appeals) is justified in denying the cenvat benefit to the appellant. The Ld. Jt. CDR further submits that since the provisions of the Cenvat Credit Rules, have not been followed by the appellant while taking the cenvat credit, the Department is justified in the invoking the extended period of limitation for issuance of SCN and the proceedings are not barred by limitation of time.

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

6. I find that the invoices have been issued by M/s Hindustan Steels Ltd. in favour of its customer M/s Hindustan Coca Cola Beverages (P) Ltd., who is the principal manufacturer of the bottles manufactured by the appellant on job work basis. Since the capital goods under the disputed invoices were directly consigned to the appellant as a job worker, the Central Excise duty indicated in the said invoices were taken as cenvat credit by the appellant. Whether the principal manufacturer M/s Hindustan Coca Cola Beverages (P) Ltd. has taken the cenvat credit based on the said duty paid documents have not been addressed by the Commissioner (Appeals) in the impugned order. Thus, in absence of any specific finding to that effect in the impugned order, I have to accept the submissions of the appellant that the credit attributable to those disputed invoices have been taken by the appellant alone, and as such, there is no question of misuse of cenvat credit by anybody else. In this context, I find support from the decision of this Tribunal in the case of **Inder Poly Fabs** (Supra), wherein it has been held that on the basis of endorsed invoices, credit can be taken by the consignee of goods. I am also of the opinion that since Cenvat Credit Rules are beneficial provisions incorporated to reduce the cascading effect of Central Excise duty, in absence of any specific finding that the cenvat credit has been fraudulently availed, the said

benefit cannot be denied in view of the fact that the capital goods have been received in the factory and used for the intended purpose. Thus, I am of the considered opinion that cenvat credit cannot be denied for non-observance of procedural conditions.

6. I find from the reply to the SCN at page 30 that the appellant had specifically mentioned in the said reply that Department was aware about the disputed documents on 28.10.2003 during the course audit of books of accounts in the factory of the appellant. Since the facts were known to the Department regarding taking of cenvat credit on the disputed invoices way back in 2003, the Show Cause proceedings initiated in 2006 is clearly barred by limitation of time and the demand cannot be fastened against the appellant. In this context the law is well settled that when the facts are known to both the sides, the extended period of limitation cannot be invoked for confirmation of the duty demand.

7. In view of above, I am of the considered opinion that this appeal should be allowed both on merit as well as on limitation. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Neha