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

Excise Appeal No. E/52606/2014-E[SM]

[Arising out of Order-In-Appeal No. BPL-EXCUS-000-APP-223-13-14 dated: 03.02.2014 passed by CCE Bhopal]

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

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Kakda Rolling Mills ...Appellant

Vs.

C. C.E. & S.T., Bhopal …Respondent

Appearance:
Mr. Prabhat Kumar (Advocate) for the Respondent
Mr. Devinder Singh, DR for the Appellants

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

Date of Hearing. 07.07.2015

Final Order No. 54309 /2015

Per S K Mohanty:

The appeal is directed against the impugned order dated 3.2.2014 passed by the Commissioner (Appeals) Central Excise, Bhopal.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Iron and Steel products falling under Chapter Heading

72 of the Central Excise Tariff Act, 1985. The appellant avails cenvat credit of Central Excise duty paid on the inputs, capital goods and service tax paid on the input services used in or in relation to manufacture of the said final product. Taking of cenvat credit on various steel items during the period August 2007 to August 2009 was denied by the Central Excise Department on the ground that the said goods are not confirming to the definition of either inputs or capital goods. The SCN issued in this regard was adjudicated vide order dated 28.09.2012, wherein demand of Rs. 10,38,476/- along with interest was confirmed in terms of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944. Besides, equal amount of penalty was imposed under Rule 15(2) *ibid* read with Section 11AC *ibid*. Appeal filed by the appellant against the said order was confirmed vide impugned order dated 3.2.2014, against which the present appeal has been preferred before this Tribunal.

3. Sh. Prabhat Kumar, the Ld. Advocate appearing for the appellant submits that the disputed goods are inputs, used for manufacture of capital goods of Chapter 84 of CETA within the factory. He further submits that the period involved in this case is from August 2007 to August 2009, whereas the SCN was issued on 23.01.2012. Thus according to the Ld. Advocate, since the SCN has been issued beyond the period of one year from the relevant date i.e. taking of Cenvat credit, the same is barred by limitation of time as per Section 11A *ibid* Ld. Advocate further submits that in absence of any element of suppression, misstatement, collusion, fraud, with intent to evade payment of duty, the extended period under the proviso to Section 11A cannot be invoked for confirmation of the duty demand and for imposition of equal amount of penalty. To substantiated his above

stand, the Ld. Advocate has cited the judgment of Hon'ble High Court in the case of **CCE Belgaum vs Hindalco Industries Ltd. reported in 2012 (286) ELT 503 (Kar)**, **Hindalco Industries Ltd. vs CCE Belgaum reported in 2008 (230) ELt 649 (Tri. Bang)**, **CCE Jalandhar vs Pioneer Agro Extracts Ltd. 2008 (230) ELT 597 (P&H)**, **Hira power and Steels Ltd. vs CCE Raipur Reported in 2008 (229) ELT 408 (Tri. Del)**.

4. Per contra, the Ld. Jt. CDR Sh. Devinder Singh appearing for the Revenue respondent submits that the appellant had not submitted the details of capital goods to which the disputed goods are used as components, spares/accessories. He further submits that since the material fact regarding taking of cenvat credit on the disputed goods and the details of capital goods were not disclosed by the appellant before the Central Excise authorities, issuance of SCN by invoking the extended period of limitation is justified and the demand confirmed by the authorities below is in confirming with the proviso to Section 11A *ibid.* To substantiate his above stand, the Ld. Jt. CDR has relied on the decision of this Tribunal in the case of **Kisan Co-operative Sugar Factory Ltd. vs CCE Meerut-I reported in 2007 (212) ELT 541 (Tri. Del) and UP State Sugar Corp. Ltd. vs CCE Meerut-I reported in 2008 (221) ELT 149 (Tri. Del)**.

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

6. The issue involved in this case for consideration by this Tribunal is as to whether the appellant is eligible to take cenvat credit on the disputed goods by treating the same as components accessories and parts of the capital goods falling under Chapter 84 of

the CETA and whether the SCN issued in 2012 covering the period from August 2007 to August 2009 is barred by limitation of time.

7. I find from the available records, that the appellant had purchased the old and used steel plant with its furnace in the year 2007 and to make it workable, the disputed goods have been used for construction/ erection of rolling platform, penal track material, supporting stand, storage, platform and for repairing of old and used parts. Considering the activities undertaken by the appellant, I am of the view that disputed goods should merit consideration as inputs for the purpose of taking cenvat credit. Further, I find from the statement recorded from the appellant pursuant to the summons by Central Excise Department that the appellant had intimated the cenvat particulars with regard to the disputed goods in the RG-23 part-II Register and also reflected in the monthly ER-I return filed before the Jurisdictional Central Excise Authorities. In view of the fact that the activities of the appellant were within the knowledge of Department, the SCN issued by invoking the extended period of limitation, in my opinion, is not maintainable.

8. In view of above, I do not find any merits in the impugned order. Accordingly, the same is set aside and the appeal is allowed both on merits as well as on limitation.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

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