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

Excise Appeal No. E/53268/2014 -Ex[SM]
[Arising out of Order-In-Appeal No. 03/Commissioner/M/-II/2014-15 dated: 30.04.2014 passed by CCE Meerut-II]

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. Jubilant Life Sciences ...Appellant

Vs.

C.C.E. & S.T. – Meerut-II …Respondent

Appearance:
Mr. Devinder Sharma, Advocate for the Appellants
Mr. G R Singh, DR for the Respondent

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

Date of Hearing.15.05.2015

FINAL ORDER NO. 54331 /2015

Per S. K. Mohanty (for the Bench):

Denial of cenvat credit of Service Tax paid on different category of insurance policies is the subject matter of present dispute, for which the appeal has been preferred before this Tribunal.

2. The submissions of the appellant are that the insurance coverage of imported inputs for storage at port and safe movement there-from to the factory is in relation to the business activity of the appellant and inputs are also used for manufacture of the final product; thus, premium paid for insuring the goods after their importation will be considered as input service. With regard to transit insurance of the finished goods, the appellant submits that the ownership of final product i.e. liquid carbon dioxide was retained by the appellant till the same were transferred to the storage tank of the buyer and that the excise duty liability has been discharged on the value of goods inclusive of the transportation and insurance charges. Thus, the appellant submits that service tax paid on such insurance premium will also be considered as input service for the purpose of availment of Cenvat credit. The appellant had relied on the decisions in the case of **Hindustan Zinc Ltd. vs CCE Jaipur reported in 2015 (37) STR 608 (Tri. Del), UOI vs Raipur Rotocast Ltd. reported in 2015 (37) STR 978 (Chhattisgarh) and Deepak Fertilizers & Petrochemicals Corpn. Ltd vs CCE Belapur reported in 2013 (32) STR 532 (Bom.)** to state that service tax paid the insurance premium should be considered as input service.

2.1 With regard to Transit Insurance service availed by the appellant for outward transportation of finished goods, the submissions of the appellant are that the recovery proceedings are barred by limitation of time inasmuch as for the disputed period March, 2008 to January 2012, the SCN was issued on 09.04.2013, which is beyond the normal period. With regard to the limitation for issuance of Show Cause Notice, the submissions of the appellant are that it has not indulged into any fraudulent activities concerning suppression, willful misstatement etc. with intent to evade payment of duty. Thus, issuance of SCN is limited for the period of one year from the date of knowledge of the Central Excise Officers who conducted the audit in the factory of the appellant on 20.10.2008 to 24.10.2008. The appellant has relied on the following judgments to support its stand that the SCN is barred by the limitation of time:-

(a) CCE Noida vs Accurate Chemical Industries reported in 2014 (310) ELT 441 (All.),

(b) CCE & ST vs Triveni Engineering & Industries Ltd. 2015 (317) ELT 408 (All.),

(c) Jammu & Kashmir Cements Ltd vs CCE Jallandhar 2014 (314) ELT 334 (Tri. Del)

(d) Nizam Sugar Factory vs CCE A.P. reported in 2006 (197) ELT 465 (S.C.)

(e) Palco Metals Ltd. vs CCE Ahmadabad 2012 (280) ELT 299 (Tri. Ahmadabad)

3. Per contra, the Ld. DR for Revenue has reiterated the findings recorded in the impugned order and further submitted that SCN has been rightly issued in the present case by invoking proviso to Section 11A of the Central Excise Act, 1944. The Ld. DR has relied on the judgment delivered by the Hon'ble Supreme Court in the case of **CCE Vishakhapatnam vs Mehta & Co. reported in 2011 (264) ELT 481 (S.C.)** and **Madras Petro-Chem Ltd. vs CCE Madras reported in 1999 (108) ELT 611 (S.C.).**

4. I have heard the Ld. Counsels for both the sides and perused the case records.

5. I find that this Bench of the Tribunal in the case of **Hindustan Zinc Ltd. vs CCE Jaipur** (supra) has allowed the cenvat credit of service tax paid on burglary insurance, Fire insurance, transit insurance for inward transportation of raw material and outward transportation of finished goods, holding that the services are confirming to definition of input service contained in Rule 2(l) of the Cenvat Credit Rules, 2004. Since, the issue regarding eligibility of cenvat credit on such services is no more *res integra*, I am of the considered view that Cenvat benefit cannot be denied to the appellant.

6. With regard to the issue raised by the appellant that the show cause proceedings are barred by limitation of time, I find that the Department had not specifically proved the fact with tangible evidence that the appellant had suppressed the fact of taking irregular credit. Thus, issuance of show cause notice on 09.04.2013, which is almost after four and a half years from the date of visit of the audit officers, in my considered opinion, is barred by limitation of time. In this context, I find support from the judgment of Hon'ble Allahabad High Court in the case of **Triveni Engineering & Industries (supra)** , wherein it has been held that mere failure to declare certain information to the Central Excise Department will not amount to willful mis-declaration or willful suppression and that in order to invoke the provisions of the proviso to Section 11A, some positive act on the part of the party has to be established to allege that there is suppression of fact. The reliance placed by Ld. DR in the case of CCE Vishakhapatnam vs Mehta & Co. (supra) and Madras Petro-Chem Ltd. (supra) are distinguishable from the facts of the present case inasmuch as in the said decided cases, the appellants had deliberately suppressed the material facts,

which the Central Excise Department came to know at a later date and the allegation was substantially proved against the said appellant.

7. In view of the above, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member(Judicial)

Neha