IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Excise Appeal No.E/2286/2011-EX [SM]

[Arising out of Order-in-Appeal No. 192/(DKV)/CE/JPR-I/2011 dated 22.06.2011 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Ultratech Cement Limited …Appellant

Vs.

C.C.E., Jaipur-I … Respondent

Present for the Appellant : Mr. Hemant Bajaj, Advocate
Present for the Respondent: Mr.M.R. Sharma, A.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 27.01.2017

FINAL ORDER NO. __54390/2017_

PER: S.K. MOHANTY

Availment of cenvat credit of Rs.4,19,179/- on containers imported alongwith capital goods and other goods for manufacture of excisable goods, is the subject of present dispute. The authorities below have held that the containers on which cenvat credit has been taken by the appellant are neither confirming to the definition of inputs nor capital goods, in terms of the Cenvat Credit Rules, 2004.

2. The ld. Advocate appearing for the appellant primarily submits that the show cause proceedings initiated by the Central Excise Department for dis-allowing the cenvat credit is barred by limitation of time inasmuch as, the cenvat credit of CVD amount paid on the imported containers were taken on 31.12.2007 and 03.03.2009; whereas, the show cause notice was issued on 02.08.2010, which is

beyond the normal period of limitation as provided under Section 11A of the Central Excise Act 1944. To justify his stand that the proceedings are barred by limitation of time and the proviso to Section 11A ibid cannot be invoked for recovery of the cenvat amount, the ld. Advocate has relied on the judgment of Hon'ble Gujarat High Court in the case of Polite Engineering Co. vs. Union of India, reported in 1995 (75) ELT 257 (Guj.) and also decision of this Tribunal in the case of BCH Electric Ltd. vs. CCE, Delhi – IV, reported in 2013 (31) STR 68 (Tri.-Del.).

3. On the other hand, the ld. AR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. It is an admitted fact on record that the capital goods were packed in the containers and that the same were suffered additional duty of customs on their importation. Taking of cenvat credit on such containers were reflected in the books of account and the cumulative particulars of cenvat credit availed during the relevant period were reflected in ER-I returns filed before the Jurisdictional Central Excise Authorities. Since, taking of cenvat credit on the disputed goods were duly reflected by the appellant in its books of accounts, the allegation of suppression cannot be sustained, justifying initiation of proceedings beyond the normal period prescribed under Section 11A of the Central Excise Act, 1944. Since the cenvat statute has not specifically dealt with the requirement of providing or disclosing the information with regard to taking of cenvat credit on each and every disputed goods, non-disclosure of such information will not amount to suppression or concealment. In this context, the Hon'ble Gujarat High Court in the case of Polite Engineering Co. (Supra) have held that non–disclosure of

information, which is not required to be disclosed or recorded in the prescribed proforma, does not amount to suppression or concealment and accordingly, extended period of limitation cannot be invoked for recovery of the modvat / cenvat credit. Further, relying on the said judgment of the Hon'ble Gujarat High Court, this Tribunal in the case of DCH Electric Ltd. (Supra) has set aside the demand on the ground of limitation.

5. In view of 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 on the ground of limitation alone, without going into the merits of the case.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita