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

Excise Appeal No. 51910 of 2017

[Arising out of Order-in-Appeal No 477(SM)CE/JPR/2017 dated 22.11.2017 passed by the Commissioner (Appeals), Central Excise CGST, Jaipur (Raj)]

M/s. Rieter Automative India Pvt Ltd. **Appellants**

Vs.

Commissioner of Central Excise Alwar **Respondent**

Appearance:

Shri B L Sharma, Advocate for the Appellants
Shri G R Singh, DR for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing /decision: 06.02.2018

FINAL ORDER NO. 50543 /2018

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein cenvat credit taken suo moto by the appellant has been denied by the authorities below. The facts of the case are that the appellant entered into an agreement with one of the principal manufacturer to whom the appellant has agreed to supply various parts and as per the agreement for manufacture of these parts, the appellant is required to purchase certain tools on behalf of the principal manufacturer and cost of those tools were to be refunded from the manufacturer except the amount of duty. The amount of duty was taken as cenvat credit by the appellant and thereafter some dispute arose between the appellant and their principal manufacturer. The goods could not be manufactured as per the agreement and on the basis of verbal agreement, the principal manufacturer sought to buy the tools purchased by the appellant. On the basis of verbal agreement, the appellant issued invoices. After issuance of invoices, neither the goods were removed under the said invoice nor any payment was received. As the goods were not removed from the factory of the appellant against the invoice for which goods were not removed, the appellant took suo moto credit and availment of cenvat credit was intimated to the department vide their letter dated 18.2.2013 which was acknowledged by the department on 20.2.2013. Thereafter, a show cause notice dated 18.3.2015 was issued to the appellant alleging that the appellant is not entitled to take suo moto credit by invoking extended period of limitation.

2. Heard the parties. Without going into the merits of the case, I find that the fact of availment of cenvat credit was within the knowledge of the department on 20.2.2013 and thereafter, the show cause notice was issued by invoking extended period of limitation on 18.3.2015. As the fact of availment of cenvat credit was well within

the knowledge of department, therefore, extended period of limitation cannot be invoked. In these circumstances, I hold that the Show cause notice is barred by limitation. Accordingly, the impugned demands are not sustainable against the appellant. Therefore, the impugned order is set aside and appeal is allowed with consequential relief, if any.

(dictated and pronounced in the open court)

(Ashok Jindal)
Member(Judicial)

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