IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 1/11/2018

Appeal No. E/51317/2017- (DB)
(Arising out of Order-in-Original No. 14-COMMR-CEX-JBP-2017 dated 26/04/2017 Passed by the Commissioner of Central Excise and Service Tax-BHOPAL)

NORTHERN COALFIELDS LIMITED Appellant

Vs.

CGST C.C & C.E-JABALPUR Respondent

Appearance
Shri Rajeev Aggarwal, Adv. for the appellant
Shri R.K. Mishra,DR for the respondent

CORAM: **HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)**
HON'BLE MR.BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order No. 53237/2018

Per: Mrs. Archana Wadhwa

1. After hearing both the sides represented by Shri Rajeev Aggarwal Ld. Advocate for the appellant and Shri R.K Mishra Ld. DR for Revenue, we find that the appellant is 100 per cent subsidiary of Coal India Ltd. With effect from dated March, 2011, excise duty was levied on their final product i.e. Coal. During the period April, 2011 to 21/06/2012, the appellant availed the Cenvat Credit of duty paid on various inputs which were subsequently cleared "as such" to their sister unit located at Uttar Pradesh and Madhya Pradesh. In as much as the credit availed by the appellant was not reversed by them in terms of the provisions of Rule 3(5) of Cenvat Credit Rules, the

proceedings were initiated against them by way of issuance of the Show Cause Notices dated 4/5/2016 invoking the longer period of limitation. Proposing to confirm the demand of around two lacks crores approximately. The said Show Cause Notice culminated into an order passed by the Commissioner confirming the demand along with the interest and imposition of interest of identical amount. The said order of the Commissioner is impugned before us.

2. Ld. Advocate on behalf of the appellant bring to our notice that subsequently they obtained the centralised registration and a common return on behalf of all the units were being filed by them. As such he submits that there is no dispute after the period of registration. Prior to Registration, they had availed the credit and transferred the inputs to their sister units, who had utilised the same for manufacture of their final product, which was leviable to duty of excise. As such he submits that duty required to be paid by them was available as Credit to their sister units and the entire exercise was Revenue neutral. In such a scenario no malafide can be attributed to them so as to justifiably invoke the longer period of limitation. He also submits that the appellant is a public sector undertaking, being 100 per cent subsidiary of Coal India Pvt. Ltd., and as per the settled law no malafide can be attributed to them as not single person is benefited by such an action of the assessee. In this scenario also, invokation of extended period cannot be upheld.

3. Countering the arguments, Ld. AR appearing for the Revenue submits that admitted the appellant was required to reverse the credit in terms of the

provisions of Cenvat Credit Rules. They have availed the excess credit on their unit, without utilising the inputs, which is a clear violation of the provisions of law. As such he supports the impugned order.

4. After appreciating the statements made by both sides we are of the view that the appeal can be disposed of on account of limitation. The appellant being the public sector undertaking cannot be saddled with any malafide suppression or mis-statement, with intent to evade the payment of duty. In any case the credit required to be reversed by the Appellant was available as credit to their sister units, who could be utilise the same for the payment of duty of excise. Thus leading to a Revenue neutral situation even after the subsequent obtaining of centralised registration, the appellant was paying the entire duty on behalf of the other units.

5. As per the Hon'ble Mumbai High Court's decision in the case of ***Commissioner of Custom & Excise & S.T., VAPI vs. Tarapur Grease India Pvt Ltd***. 2016 (334) ELT 416 (Bom.), the identical issue stands considered and it stands held that non reversal of removal of inputs "as such" to their sister units involves the doctrine of Revenue neutrality. As the Tribunal had set aside the demand in that case but imposed penalty on technical contraventions, Hon'ble High Court held that even penalties were not imposable. To the same effect is the decision of the Mumbai High Court in the case of ***Sanvijay Rolling & Engineering Ltd. vs. Commissioner of C.EX., Nagpur***- 2018(11) G.S.T.L. 344 Bom) and Gujrat High Court decision in the case of ***Commissioner of C.EX. & CUS., Vadodara-II vs. Indeos ABS Ltd.*** 2010 (254) ELT 628 (Guj) and Tribunal decisions in the case of

Commissioner of Central Excise, Mumbai vs. Special Steel Ltd. 2015 (329) ELT 449(Tri.-Mumbai) & ***Sarover Hotel Pvt. Ltd. vs. Commissioner of Serive Tax, Mumbai,*** 2018(10) GSTL 72(Tri-Mum)

6. In as much as and admittedly Revenue neutral situation is involved in the present appeal and the appellant is a PSU, we are of the view that extended period is not invokable. Impugned orders are accordingly set aside and appeal is allowed with consequential relief.

(Dictated and pronounced in open court)

(Bijay Kumar)
Member (Technical)

(Archana Wadhwa)
Member(Judicial)

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