

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT – IV

Excise Appeal No. E/51507/2018 [SM]

[Arising out of Order-in-Original No. OIA-IND-EXCUS-000-APP-669-17-18 dated 20/02/2018 passed by the Commissioner of CGST & Central Excise, Ujjain]

Pensol Industries Ltd

...Appellant

Vs.

CGST, C.C. & C.E-Ujjain

...Respondent

Present for the Appellant : Mr. Manish Saharan, Advocate

Present for the Respondent: Mr. K. Poddar, AR

Coram: HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 28.12.2018

FINAL ORDER No. 53482/2018

PER: ARCHANA WADHWA

After hearing both the parties I find that the dispute in the present Appeal relates to cenvat credit of service tax paid on outward transportation of goods.

2. Ld. Advocate appearing for the appellant fairly agrees that the issue now stands decided against them by the decision of the Hon'ble Supreme Court in the case of CCE Vs. Ultratech Cement Ltd. Final Order No. 12/2018. He however assails the impugned order on the point of limitation by submitting that the period involved is from October 2013 to April 2017 and the SCN was issued on 19.06.2017, invoking the longer period of limitation. Ld. Advocate submits that the law stands reversed by the Hon'ble Supreme Court by setting aside the Bombay High Court's decision in the case of Ultra Tech Cement Ltd. which was in favour of the assessee. It is also submitted that there are many other decisions of various High

Courts as also of the Tribunal holding that where the sales are on FOR basis i.e. the goods are being delivered at the buyer's door steps and the assessee continues to be the owner of such goods, the transportation activities has to be held as input services and the service tax paid on the same is available as cenvat credit to the assessee. In such a scenario, it is submitted that there could be no malafide on the part of the assessee and the penalties cannot be imposed upon them.

3. I find that the issue now stands settled against the assessee vide above referred decision of the Hon'ble Supreme Court. However, it is a fact that prior to the said decision, the service tax paid on the transportation of the goods up to buyer's premises was being held as an admissible cenvat credit to the assessee, by following various decisions. Where a favourable decision holds the field Appeal during the relevant period and assessee follows the same, it cannot be said that there was any malafide intention on the part of the assessee with a view to have the undue benefits. Otherwise, also I find that the credit was being availed by reflecting the same in the statutory records in which case no suppression or mis-statement can be attributed to the assessee.

4. In view of the above I agree that the Ld. Advocate that longer period of limitation is not available to the Revenue. However a part of the demand would fall within the limitation period which would be quantified by the original adjudicating authority.

5. As regards, penalty imposed in both the cases, I, in view of the foregoing discussion and in the absence of any malafide on the part of the assessee, hold that the penalty is not imposable.

Accordingly, penalty is set aside. The Appeal is disposed of in above terms.

[Dictated and pronounced in the open Court]

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

D.J.