

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

Date of Hearing/Decision: 11.12.2018

Appeal No. E/53188/2018-SMC

[Arising out of Order-in-Original No. OIA-BHO-EXCUS-001-APP-082-18-19 dated 28/05/2018 passed by COMMISSIONER OF CGST & CENTRAL EXCISE-BHOPAL (Appeal)]

TRIMULA INDUSTRIES LIMITED

Appellants

Vs.

CGST C.E & C.C-BHOPAL

Respondent

Appearance:

Shri Prabhat Kumar, Advocate for the Appellant

Shri P.R. Gupta & S. Nunthutk, AR for the Respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)

FINAL ORDER NO. 53504/2018

Per Anil Choudhary:

1. Heard the parties. The issue in this appeal is whether the show cause notice has been rightly issued invoking the extended period of limitation.
2. The facts in brief are that the appellant is a manufacturer of sponge iron. During the course of audit for the period February, 2014 to March, 2015 it was noticed that appellant have wrongly taken Cenvat Credit of input services amounting to Rs. 2,22,252/- being the services used in the employee hostel and other repairs and maintenance in the plant. On the objection raised by the audit vide spot memo dated 9th July, 2015, on the same date the appellant agreed to the objection and reversed the Cenvat Credit taken being Rs. 2,11,780/- + 10,472 totaling Rs. 2,22,252/- vide a two separate entries in their Cenvat Credit account. The appellant, however, did not pay interest being of the view that the same is not

applicable as the amount had not been utilized and have taken credit a few months earlier only.

3. Show Cause Notice dated 4th May, 2017 was issued invoking the extended period of limitation alleging as follows:-

5. *Had the fact of availment of inadmissible cenvat credit not been detected by the Audit Team of Central Excise audit circle Satna, the irregularity would have gone unnoticed. The Noticee had not submitted any documents or information, such as copies of relevant Invoices/Abstract/Statement of Cenvat Credit taken by them etc. to the department for taking such credit. They had also not mentioned the facts of taking such wrong Cenvat Credit in their returns/reports filed by them. It is also pertinent to mention here that the Noticee are registered with Central Excise Department since long and they are aware of the Rules/Sections/ Notifications/ Laws & Procedures of the Department. In spite of that they had taken inadmissible Cenvat Credit, which was not admissible to them. The Noticee are working under Self Removal Procedure and they are clearing their goods on self-assessment basis without physical verification or valuation by the Central Excise Officers and therefore, it is the prime responsibility of the Noticee to take all precautions to avoid such lapses, wrong/excess availment of Cenvat Credit, breach of any of the Rule/Section of the Central Excise Act/Rules etc. In spite of the same they had taken inadmissible Cenvat Credit. Further, it appeared that the Noticee had done the said act with intent to evade payment of Central Excise Duty liveable on final products cleared by them by way of utilizing such inadmissible Cenvat Credit.*

Since the notice have suppressed the material facts from the department as discussed above with intent to evade payment of Central Excise duty, the extended period of limitation for recovery of duty amount so evaded may be invoked in terms of proviso to Section 11A of the Central Excise Act, 1944.

6. *Thus, the irregular cenvat credit amounting to Rs. 2,22,252/- taken and utilised by the Noticee on the inadmissible input services appears liable to be recovered along with interest under rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A and 11AA of the Central Excise Act, 1944. Further, the notice, by taking the said inadmissible cenvat credit and utilising the same for payment of excise duty have contravened the provisions of rule 2,3,4 & 9 of the Cenvat Credit Rules and rendered themselves for punishment under rule 15 of the Cenvat Credit Rules read with Section 11AC of the Central Excise Act, 1944.*
4. The show cause notice was adjudicated on contest and the proposed demand confirmed and adjusted the amount of pre-deposit already made further interest was demanded and also penalty was imposed of equal amount under Rule 15 (2) of CCR, 2004.
5. Being aggrieved the appellant preferred appeal before Ld. Commissioner (Appeals) who have been pleased to hold that there is no applicability of interest as the amount have not been utilized following the ruling of Hon'ble Karnataka High Court in the case of **CCE & ST V/s Bill Forge Pvt. Ltd. 2012 (279) ELT 209**. Further he was pleased to uphold the demand and also upheld the invoking of extended period of limitation. However, as the appellant had maintained proper records of such credit taken in their books of account, was pleased to reduce the penalty to 50%.
6. Being aggrieved the appellant is before this Tribunal.
7. Heard the parties.
8. Having considered the rival contentions I hold that the transaction was duly recorded in the books of accounts of the appellant. Secondly a major part of the credit relates to repair and maintenance which is definitely admissible as cenvat credit and is not excludible under the

exclusion clause Rule 2(l) for the purpose of civil construction. Further from the allegations in the show cause notice it is evident that the appellant had maintained proper records, filed timely returns no case of concealment or contumacious conduct is made out. Accordingly, I hold that the extended period of limitation is not invocable. Consequently, I set aside the penalty imposed under Rule 15 of CCR 2004.

9. Accordingly, the appeal is allowed with consequential benefits.

(Order Dictated & pronounced in the open court)

(Anil Choudhary)
Member (Judicial)

Rekha