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

Excise Appeal No. 53641 of 2015

[Arising out of the Order-in-Appeal No. JAI-EXCUS-000-COM-27-15-16 dated 30.06.2015, passed by Commissioner of Central Excise, Jaipur]

M/s. Ericsson India Pvt. Ltd. **Appellants**

Vs.

CCE, Jaipur **Respondent**

Appearance:

Shri Amit Jain , Advocate for the Appellants
Shri S K Bansal, AR for the Respondent

<u>CORAM</u>:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. C L Mahar, Member (Technical)

Date of Hearing/ Decision: 07.02.2019

FINAL ORDER No. 50307 /2019

<u>Per: Anil Choudhary:</u>

Heard the parties. The issue in this appeal is whether the appellants, manufacturer of telecommunication equipment, whether Show cause notice dated 19.9.2014 have been rightly issued for the period July, 2009 to March 2013 invoking the extended period of limitation, alleging that the appellant did not appropriately reverse the cenvat credit on the partially / fully writing off of inputs as required under Rule3(5B) of Cenvat Credit Rules, 2004.

2. From the facts on record, it is admitted that the appellant was reversing the cenvat credit from time to time during the disputed period on the inputs fully written off in their books of account and disposing the same. Only in case of partially writing down of the value of the inputs, the appellant was not reversing the credit as according to them Rule 3(5B) of Cenvat Credit Rules provide for reversal of Cenvat credit only in case of writing down the value fully, and not in the case of partial writing down. For ready reference, Rule 3(5B) is reproduced as under:

> [(5B) If the value of any,
> (i) Input, or
> (ii) Capital goods "before being put to use"
> [on which CENVAT credit has been taken, is written off fully or partially or where any provision to write off fully or partially has been made in the books of account then] the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods:
>
> Provided that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of taxable services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the Cenvat Credit paid earlier subject to the other provisions of these rules.]

3. As per the show cause notice, in the course of audit, it was noticed that the appellants have made provision during the financial

year 2011-2012 in their books of account towards 'obsolete inputs'. It appeared to the Revenue that the appellant was required to reverse the proportionate Cenvat Credit on writing down the partial value of inputs. Although the appellant aggrieved by the objection of the Revenue reversed the cenvat credit on the partially written down value of inputs also. There is no dispute as regards the reversal of cenvat credit on fully writing down of value of inputs.

4. Learned Counsel have pointed out from Annexure F to the Show cause notice, wherein it contains details of periodical writing off of the full value of the inputs and regular reversal of cenvat credit during the period of October, 2009 to March, 2014. As regards the reversal of cenvat credit on partial writing down of the value of inputs also, the show cause notice admits that the said amount have been reversed, as is evident from paragraph 9 of the Show cause notice. However, the show cause notice also proposed for appropriation of matching amount, which is proposed to be demanded, for appropriation.

5. As regards the invocation of extended period the show cause notice has made the following allegation as contained in paragraph 16 for ready reference:

> "16. And whereas, it appears that the provisions of extended period is invokable for effecting the recovery of cenvat and interest in the instant case as the assessee never disclosed / intimated the department about the fact of making provisions

for inventory write off. They did not reverse the cenvat credit in compliance of rule 3(5B) of Cenvat Credit Rules, 2004. Thus, the assessee have deliberately suppressed the facts from the department, and have avoided payment of cenvat and interest thereon with intent to evade payment of duty. The facts would never have come to the notice of the department, had the audit party not detected the same. The assessee are also liable to penal action under rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944 as they have suppressed the facts with intent to avail inadmissible cenvat credit, which otherwise was not due to them legally. ”

6. Learned AR has supported the impugned order and also invocation of extended period of limitation.

7. Having considered the rival contentions, we find that the issue is one of interpretation. We further find that for reversal of cenvat credit on partial writing down of value of inputs , the provision was introduced only first time by amendment of Rule 3(5B) of Cenvat Credit Rules, with effect from 01.03.2011. Further, there was no provision prior to 01 March 2013 for recovery of cenvat credit and interest thereon under Rule 3(5B) etc. which was made applicable with effect from 01.3.2013 only, by virtue of Notification No. 3 of 2013-CE(NT) dated 01.03.2013. The notification provides that if the manufacturer of goods or the provider of output service fails to pay

the amount payable under sub-rule (5), (5A) and (5B), it shall be recovered, in the manner as provided in Rule 14, for recovery of CENVAT credit wrongly taken.

8. Learned Counsel have also pressed the ground that as they were not required to reverse the cenvat credit on partial writing down the value of inputs, prior to 01.03.2011, accordingly, we hold that as there was no such legal requirement. The learned Counsel also prays that they are entitled to refund, already reversed credit on account of partial writing down of value, prior to 01.03.2013.

9. In this view of the matter, we hold that the issue has arisen due to change of opinion on the part of the Revenue, but there is no suppression of facts on the part of the appellants. Further, we find that no amount was due to be reversed under rule 3(5B) on the date of issue of show cause notice. Accordingly, we hold that larger period for limitation can not be invoked and no show cause notice was required to be issued. Accordingly, we hold that impugned order is not sustainable, and is set aside. Appeal is allowed with consequential relief. In this view of the matter, we set aside the demand, penalty and interest.

(Dictated and pronounced in the open Court)

(C L Mahar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

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