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

Date of Hearing/Decision: 06.02.2019

Appeal No. E/56043/2014-DB
[Arising out of Order-in-Original No. OIO-JAI-EXCUS-001-COM-47-14-15 dated 14/10/2014 passed by Commissioner of Central Excise-JAIPUR-I (Appeal)]

Arl Infratech Ltd. Appellants

Vs.

CE & ST, Jaipur-i Respondent

Appearance:
Shri A.K. Prasad, Advocate for the Appellants
Shri H.C. Saini, DR for the Respondent

CORAM:
Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri C.L. Mahar, Member (Technical)

FINAL ORDER No. 50629/2019

Per Anil Choudhary:

1. The issue in this appeal is whether the appellant-assessee, a manufacturer of Asbestos Cement Sheets, Asbestos Pressue Pipe and Glass Fiber Reinforced Plastic Pipes, etc. whether they have correctly taken cenvat credit on the cost of transportation, for clearance of their goods from the factory to the premises of their buyer.

2. The show cause notice dated 3rd July, 2013 was issued as it appeared to Revenue that appellant is not entitled to take cenvat credit on outward transportation of finished goods for the period in question May/June 2010 to December, 2012. There was an amendment in Rule 2(l) of the Cenvat Credit Rules w.e.f. 1st March, 2008. Wherein earlier i.e. prior

to amendment the said rule provided that an assessee is entitled to take Cenvat Credit of all input services for removal of their goods "from the place of removal". This part of the definition was amended and the same read after amendment as "up to the place of removal".

3. There were also a Board Circular dated 23rd August, 2007 which provided that an assessee manufacturer is entitled to take Cenvat Credit of outward transport up to the place of removal and the same was further clarified that till the point where the property in the goods is transferred. It was clarified that where the manufacturer delivers goods at the buyers premises and buyers accepts goods after such inspection, and the goods remain the property of the manufacturer till the door of the buyer, in such case manufacturer was entitled to take cenvat credit till the point of delivery i.e. door of the buyer of the goods.

4. It is further alleged in the show cause notice that the taking of Cenvat Credit came to notice of the Revenue in the course of audit of the record by the Department. Accordingly, it appeared to Revenue that the appellant have suppressed the material information from the Revenue, of taking of irregular credit and accordingly extended period of limitation was invoked for issuance of the show cause notice.

5. Earlier this appeals was decided by Final Order No. 55755/2017 dated 7th August, 2017, whereby this Tribunal allowed the appeal following the precedent order in the appellant's own case for the immediate preceding period June, 2009 to May, 2010 and also referring to decisions of Hon'ble Karnataka High Court in Madras Cement Ltd. V/s Additional Commissioner, Bangalore 2015 (40) STR 645. Being aggrieved Revenue preferred appeal before Hon'ble Rajasthan High Court being Appeal No.

DB Central Excise Appeal No. 15/2018 and by order dated 19th September, 2018, Hon'ble High Court considered the appeal of Revenue and also cross objections filed by the appellant-assessee and were pleased to remand the matter to the Tribunal to consider the issue on merits as well as also consider the issue on limitation and penalty.

6. Heard the parties. The Ld. Advocate for the appellant have led further evidence by way of filing copy of the invoices for the relevant period. Pointing out from sample invoices he states that it appears, that the appellant have charged transport charge separately in invoices and the same did not form part of the transaction values as defined under section 4 of the Central Excise Act. Accordingly, the Ld. Counsel concedes that on merits it may be held that they are not entitled to Cenvat Credit. However the Ld. Counsel further argues that as there were divergent opinion and also in the preceding period this Tribunal has held in their favour vide Final Order No. 57848/2017 dated 9th November, 2017. Wherein this Tribunal held that the appellant is entitled to Cenvat Credit following its precedent judgment in Birla Corporation Ltd. V/s CCE, Jaipur-II, also in Madras Cement Ltd. V/s Additional Commissioner of Bangalore of the Karnataka High Court. According to appellant as the issue was debateable and there were divergent views of the different Benches of the High Court and this Tribunal, and the said issue was finally settled by order of Hon'ble Supreme Court being order dated 01/02/2018 in the case of Commissioner V/s Ultra tech Ltd. 2018 (9) GSTL 337 (SC).

7. Accordingly, in the facts and circumstances, the present matter arising from the subsequent show cause notice on the same issue, we hold that the extended period of limitation is not available to Revenue, as

there is no case of suppression etc made out. Admittedly show cause notice states that same arises pursuant to audit. We find that similar show cause notice was issued previously also. Accordingly, we hold that the appellant is liable to reverse cenvat credit only for the normal period of limitation which is July, 2012 to December, 2012 as the show cause notice is served on 18 July, 2013, and the appellant has filed return for the month of June 2012 on 9th July, 2012. Accordingly, we allow this appeal in part. The penalty imposed is also set aside.

8. The appellant is directed to file a calculation of the amount they are required to reverse by way of Cenvat Credit before the Original Adjudicating Authority and Commissioner shall verify the same and if any discrepancy is pointed out, and the appellant shall accordingly act.

[Order dictated & pronounced in the open court]

(C. L. Mahar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

Rekha