CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 52109 of 2018

[Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-21-2018-19 dated 12 April, 2018 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur]

M/s Nova Iron & Steel Ltd. **...Appellant**
Vill. Dagori, Tehsil – Bilha
Dist. Bilaspur (C.G.)

Vs.

Commissioner of GST,
Central Excise & Customs **...Respondent**
Central Excise Building
Tikrapara, Raipur(C.G.)

APPEARANCE:

Shri S.N. Panda, Advocate for the Appellant
Shri P.R. Gupta, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER No. 50682/2019

DATE OF HEARING/ DECISION : 07 May, 2019

RACHNA GUPTA

Present is an Appeal against the Order of Commissioner(Appeals) bearing No. 91-CE/2017 dated 12 April, 2018.

2. The relevant factual matrix for the impugned adjudication is that the appellant is the manufacturer of sponge iron. They are also availing credit of duty paid on inputs/ raw materials/ capital goods and input services and are also utilising such credit towards payment of duty on their final products. Department, on the basis of an intelligence gathered by their Preventive Branch Headquarters, Bilaspur noticed that the appellant had availed the cenvat credit on the strength of supplementary invoices issued by the subsidiary companies of Coal India Limited i.e. M/s. South Eastern Coalfields Limited (M/s. SECL hereinafter) against the coal receipts despite that the appellants units has been closed since June, 2013. On the

scrutiny of the appellant's ER-I return and input cenvat credit account for the month of March 2014, December 2014 and January 2015, the Department observed that they have availed cenvat credit on coal amounting to Rs. 21,54,707/- on the strength of nine supplementary invoices of March and May, 2013 issued by M/s. SECL since the credit availed was after six month of the date of issuance of those invoices. The Department vide the show cause notice No. 13615 dated 06 November, 2015 has proposed the recovery of the aforesaid amount of cenvat credit as being not allowed to the appellant being in contravention of Rule 4(1) and Rule 9 (1) (b) of Cenvat Credit Rules, 2004. The interest at the appropriate rate and the proportionate penalty was also proposed to be imposed upon the appellants. The said proposal was confirmed by the original adjudicating authority. The Order under challenge has upheld the said confirmation of the said proposal. Being aggrieved, is the present Appeal.

3. Learned Counsel for the appellant, Mr. S.N. Panda has submitted that the invoices of March and May 2013 were not made available to the appellant prior March 2014, December 2014 and January 2015. The credit has been availed within a period of six months from the date of receipt of invoices. Learned Counsel has placed reliance upon the applications as were filed by the appellant under Right to Information Act for receiving the aforesaid invoices. It is impressed upon that the cenvat credit on supplementary invoices is otherwise available. While relying upon the decision of this Tribunal in the case of **Ultra Tech Cement Limited Unit Aditya Cement Works Vs. CE & ST, Udaipur** reported in **2018 (8) TMI 952, (Del., CESTAT)**, Ld. Counsel has prayed for the Order under challenge to be set aside and Appeal to be allowed.

4. Per contra, Learned Departmental Representative has justified the Order under challenge. Emphasis has been placed on Rule 4(1) and Rule 9(1) (b) of CCR, 2004 which mandates a time limit of six months from the issue of invoice for availing cenvat credit. It is impressed upon that since the conditions of both these provisions have not been complied with by the appellant and also for the fact of availment of cenvat credit earlier also for the period of March, 2013 to

May, 2013 has been suppressed by the appellant that the Commissioner(Appeals) has rightly upheld the reversal of the cenvat credit availed. Appeal is accordingly prayed to be dismissed.

5. After hearing both the parties and perusing the case law as well as the decision relied upon by the appellant, it is observed and held as follows:

5.1 Admittedly the demand raised by the Department against M/s. SECL is under challenge before the Hon'ble Supreme Court, however, with respect to the duty on royalty, stowing charges, etc. The cenvat credit can still be availed by the manufacturer on the strength of supplementary invoices issued by M/s. SECL. Rule 4(1) and Rule 9(1)(b) of Cenvat Credit Rules entitles the manufacturer for the same. The Rules read as follows:

> *"Rule 4(1) of the Cenvat Credit Rules, 2004 stipulates that the cenvat credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service.*
>
> *Sub Rule (b) of Rule 9(1) provides that the cenvat credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of a supplementary invoice, issued by a manufacturer of importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer of importer or from other premises from where the goods are sold by, or on behalf of the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non levy or short levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty."*

Perusal thereof makes it clear that supplementary invoices issued by the manufacturer M/s. SECL in the present case, can always be the basis for availment of the cenvat credit subject to following conditions:

(a) The credit has to be taken immediately on the receipt of inputs [Rule 4(1)]

(b) It has to be availed within a period of six months from the issue of the invoice [Rule 9 (1) (b)]

(c) The additional amount of duty is recoverable from the manufacturer on account of any non levy or short levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Excise Act or of the Customs Act or the Rules made therein with the intent to evade the payment of duty.

5.2 In the present case, admittedly the supplementary invoices on which credit has been availed were issued in March and May 2013 and the credit there upon has been availed in March 2014, December, 2014 and January, 2015. Thus, the credit has neither been availed immediately on the receipt of inputs nor has been availed within the six months of the issue of the receipts. It becomes clear that while availing the said cenvat credit assessee has contravened the time limit of both the provisions relevant for the availment of the cenvat credit even on supplementary invoices. The argument of the appellant of not receiving the invoices in time and the emphasis upon RTI application is not sufficient to extend any benefit in favour of the assessee because as per the Rules of Interpretation of Law, the language of the statute has to be read strictly in terms of the language therein. Both the Rules as quoted above have no ambiguity as far as the time for the availment of cenvat credit is concerned. There is nothing nor even the RTI applications which can give any reason to have an extended interpretation to both these provisions.

5.3 In addition, there has been a Circular No. 990/14/2014 dated 19.11.2014 on the subject of clarification regarding availment of cenvat credit after six months. It has been clarified that the limitation of six months would apply when the credit is taken for the first time on the eligible document. It would not apply for taking re-credit of amount reverse however after meeting the conditions prescribed in these Rules, since the appellant had concealed the earlier cenvat credit entry No. 118-127, the appellant cannot be allowed to take a stand of the impugned cenvat credit entry No. 113 to be a case of taking re-credit of the amount reversed. Otherwise also, it becomes the case of suppression which again is a condition prescribed for availment of cenvat credit as per Rule 9(1) (b) of CCR, 2004 within the time limit as statutorily fixed. Hence, irrespective of the entitlement of the appellant for availing cenvat credit on supplementary invoices as has been held by this Tribunal in **Ultra Tech Cement Ltd. Unit Aditya Cement Works** (supra) case, the appellant herein has rightly been denied the availment thereof being barred by time. I therefore do not find any infirmity in the Order under challenge. Same is hereby upheld. Resultantly, the Appeal stands dismissed.

[Dictated and pronounced in the open court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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