

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - SM
COURT - I**

Appeal(s) Involved:

E/30750/2018-SM

(Arising out of Order-in-Appeal No. VIZ-EXCUS-001-APP-321-17-18 dated 28/03/2018 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals) Visakapatnam)

**The Commissioner of Central Tax,
Visakhapatnam**

Appellant(s)

Versus

Vijayasri Organics Limited

Respondent(s)

Appearance:

Mr Guna Ranjan, A.R for the Appellant.

Ms Swetha Giridar, Adv for the Respondent.

CORAM:

HON'BLE Mr.P. VENKATA SUBBA RAO , MEMBER (TECHNICAL)

Date of Hearing: 12/12/2018

Date of Decision: 12/12/2018

Final Order No. A/ 31560 / 2018

[Order per: P. VENKATA SUBBA RAO]

This appeal has been filed by the Revenue against order-in-appeal No. VIZ-EXCUS-001-APP-321-17-18 dated 28.03.2018.

2. The facts of the case in brief are that the appellant had taken CENVAT credit on invoices beyond the six months from the date of invoice. This fact came to light during the course of audit. A show cause notice was issued to

the respondent stating that the credit has been taken in violation of the 5th proviso to Rule 4(7) of CENVAT Credit Rules 2004 inserted vide Notification No. 21/2014-CE dated 11.07.2014 with effect from 01.09.2014. As per this amendment, manufacturer or provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9 of the CENVAT Credit Rules. The show-cause notice sought to deny irregularly availed CENVAT credit and recover the same along with interest and also impose penalties. After following due process of law, the lower authority has confirmed the demand along with interest and appropriated the amount already reversed by the respondent herein towards the demand. He also imposed a penalty equal to 50% of the amount demanded. Aggrieved, the appellant appealed before the 1st Appellate Authority who set aside the order, allowed the assessee's appeal on the following grounds.

- (i) The notification came into effect from 01.09.2014 and therefore it does not apply to invoices which were issued prior to this date. In other words, the 1st Appellate Authority held that the relevant date for deciding whether limitation would apply is the date of invoice and not the date on which they have taken credit.
- (ii) The 1st Appellate Authority held that the appellant has, in fact, taken credit in their private records including project ledgers service tax receivable accounts, excise duty payable accounts etc. within six months from the date of invoice but had only failed to reflect these in the ER-1 returns for the corresponding periods.
- (iii) Substantive benefit of CENVAT credit cannot be denied for a procedural lapse of not reflecting the amount of credit taken in their ER 1 returns.

3. The present appeal filed by the Revenue is against the order of the 1st Appellate Authority on the following grounds:

The dispute has originated on scrutiny of ER-1 returns of the assessee by the audit. In fact, the only document which is submitted to the department reflecting CENVAT credit taken is the ER-1 return which did not reflect that the credit has been taken. Although the respondent has received the goods and the invoices, they have failed to take credit of CENVAT within six months from the date of invoice as required under the law. The fact that the respondent has taken CENVAT credit wrongly has not been disclosed to the department as the ER-1 required only consolidated amounts to be reflected. It is for the assessee to ensure that they have taken credit as per the rules and they have failed to do so. As per the respondent's contentions they have been maintaining ledgers as on the date of audit of the unit and if so, nothing prevented them to produce them before the audit for verification and no such records were produced. After audit, they must have prepared and submitted records to camouflage the fact that they have irregularly availed CENVAT credit.

4. The appellant prays that the impugned order may be set aside and the demand along with interest and penalty as adjudged by the lower authority may be confirmed. Learned A.R. takes me through the facts of the case and reiterates the above submissions.

5. Learned counsel for the respondent opposes the appeal on the following grounds.

- (i) The invoice was issued prior to 01.09.2014 and therefore the amendment requiring the credit to be taken within six months does

not apply to this invoice as was held by the Tribunal in the following cases:

- 1) Suryadev Alloys & Power Pvt Ltd Vs CCE [2018(11)TMI 1019 (CESTAT-Chennai)
- 2) Indian Potash Ltd Vs Commissioner of Central GST, Meerut [2018(10)TMI 1367-CESTAT Allahabad]
- 3) Voss Exotech Automotive Pvt Ltd Vs CCE Pune [2018(3)TMI 1048-CESTAT Mumbai]
- 4) Hariprabha Chemicals Pvt Ltd Vs CGST, Kolhapur [2018(9)TMI 19-CESTAT Mumbai]

(ii) There was no statutory requirement of maintaining records in any particular form and they had, in fact, taken credit in their private records and reflected the same in their ER-1 partly and such belated reflection in the ER-I does not amount to not taking credit of CENVAT within six months. These ledgers and accounts were produced before the 1st Appellate Authority who, after verifying the same, set aside the order-in-original.

(iii) A show-cause notice was issued invoking extended period alleging suppression of the fact that they have taken CENVAT credit on time barred documents, and that they have not furnished document-wise CENVAT credit details to the Range superintendent. In fact, there is no suppression because they have submitted whatever they were required to submit viz., ER-1 returns which do not require details of the CENVAT credit availed invoice wise. The show-cause notice is, therefore, time barred and should be set aside of this ground alone.

6. I have considered the arguments of both sides and perused Rule 4 of the CENVAT Credit Rules 2004 as amended by Notification No. 21/2014

which required CENVAT credit to be availed within 6 months from the date of issue of the invoice. The department's case is that the respondent has taken credit after a period of six months. The counsel for the respondent argues that they have in fact taken credit within six months but have not reflected the same in the ER-1 returns. In fact, they have taken credit in their private records but they are not fully reflecting the credit taken in the ER-1 returns. They have only been entering such amount as was required for clearance of goods in their ER-1 returns. In other words, there is a time gap between actual taking of credit and reflecting the same in ER-1 registers. The department's case is that the private records do not matter. What is required is that that the appellant has to take credit within six months and the fact that they have taken credit within six months only gets reflected in their ER-1 returns. Otherwise, the department has no way of knowing whether they have taken credit within six months. I find strong force in the argument of the revenue on this aspect that credit has to be taken within a period of six months and the fact that they have taken credit has to be reflected in their ER-1 returns. Otherwise, the entire rule has no meaning and the department has no means of verifying whether the credit was taken as per the Rules. On the second point as to whether the relevant date for effect of the Notification placing the time limit is the date of invoice or the date on which credit has been taken, I find that Tribunal in the case of Suryadev Alloys & Power Pvt Ltd (supra) and Indian Potash Ltd (supra) and Voss Exotech Automotive Pvt Ltd has held that the date of the invoice has to be after 01.09.2014 for limitation of six months to apply. I respectfully follow this decision. In this case since invoices in question were issued prior to 01.09.2014, credit is admissible on this ground alone.

In view of the above, I find that appeal is liable to be rejected and I do so.

7. The appeal is rejected.

(Order pronounced and dictated in open court)

P. Venkata Subba Rao
MEMBER (TECHNICAL)

Neela Reddy