

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

**Excise Appeal No. 76317 of 2019**

(Arising out of Order-in-Appeal No.01/KOL-I/2019 Dated 29.01.2019 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

**M/s. Pan Indian Enterprise**

(A-3, Khidderpur Industrial Estate 5, Hide Road Extension, Kolkata-700088)

**Appellant**

*VERSUS*

**Commissioner of CGST & Central Excise, Kolkata South  
Commissionerate**

(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

**Respondent**

**APPEARANCE :**

None for the Appellant

Mr. P. K. Ghosh, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)**

**FINAL ORDER NO.75769/2023**

Date of Hearing : 19 June 2023

Date of Decision : 19 June 2023

**PER R. MURALIDHAR**

No one appeared on behalf of the Appellant.

2. Perused the documents with the help of Learned AR.
3. I find that since the issue involved in this case lies in narrow compass, the Appeal itself can be taken up for disposal.
4. The Appellant has erroneously paid excess Excise Duty of Rs.82,400/- during the month of September 2013 which was paid by debiting this amount in their RG 23 A (Part-II) on 13/09/2013. In the course of their own internal audit, they have found that this amount was paid in excess by them. Considering the same to be on bonafide accounting mistake from their side, they have taken the credit of Rs.82,400/- in their RG23 A part-II on 01/09/2014. The re-credit details were provided in their ER Return for the month of September 2014. Thereafter, a Show Cause Notice was issued on 21/12/2016 wherein the extended period provisions were invoked to demand reversal of Rs.82,400/-. The Appellant submitted before the authority that they have taken the re-credit of Cenvat on the

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bonafide belief that since they have paid the excess excise duty by way of Cenvat Debit earlier, they have taken the credit in their Cenvat Account and reflected the same in the monthly Return ER-1 for the month of September 2014. No further query was raised by the Range/Division official on this account.

5. The Appellant plead in their Appeal that this issue is covered by the decision of **Solaris Chemteck Limited Vs. CCE, Manglore-2008 (224) ELT 333 (Tri-Bangalore)**. They also rely on the case law of **Krishnav Engineering Limited Vs CESTAT-2016 (331) ELT 391 (Allahabad High Court)**. They submit that the confirmed demand is liable to be set aside even on account of limitation since the fact of taking the re-credit was known to the Department by way of ER 1 filed for the month of September 2014. When the Department was aware of such re-credit, they cannot alleg suppression to invoke the proceedings for the extended period.

6. The Learned AR reiterates the findings of the lower authorities.

7. From the factual matrix, it is clear that the Appellant has discovered the excess excise duty of Rs.82,400/- paid by them in the Month of September 2013 and they have taken the credit of the same amount in the month of September 2014. The re-credit was properly reflected in the ER-1 Records. It is seen from the records that at the time of adjudication proceedings, they have produced copies of the RG-23A and ER-1 to the Adjudicating Authority to show that these figures have been properly reflected in the Returns.

8. The Tribunal in the case Solaris Chemteck Limited Vs. CCE, Manglore-2008 (224) ELT 333 (Tri-Bangalore) has held as under:-

*7. On a careful consideration of the issue, we find that the appellants reversed the credit only on the insistence of Audit. Later, they realized that the advice given was wrong. Therefore, they informed the department of their intention to reverse the credit and even when the Department did not give permission for reversal, they re-credited the amount. We find that the appellants have relied on certain decisions, which hold that no permission is needed for re-credit in respect of wrong reversal. These decisions will prevail over the single member*

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decision relied on by the learned DR. It is also to be borne in mind that it is not the case of the Revenue that the appellants are not entitled for the credit. In these circumstances, it would be very harsh to deny the credit. The Audit Officers also ought to have been very careful before tendering their advice, which was found to be erroneous. In these circumstances, we do not find any justification for demanding the amount of credit taken by the appellants. Hence, we allow the appeal with consequential relief. [Emphasis supplied]

9. In the case of Krishnav Engineering Limited Vs CESTAT-2016 (331) ELT 391 (Allahabad High Court), the Hon'ble High Court has held as under:-

6. In this view of the fact, we find that the show cause notice was wrongly issued on a wrong premise that no permission was taken or that original documents were not filed. In fact, we find that the appellant had not only intimated the department about its intention but also had filed the necessary documents. The letter indicated the details of the description of the goods, the invoice bills and the credit to be taken. This was in consonance with the provisions of Rule 9. If the authority had any objection they should have immediately asked the appellant for further clarifications, which in the instant case was not done. [Emphasis supplied]

10. Apart from this, since the Appellant has given all the details of re-credit for the Return pertaining to September 2014, the Department could not have invoked the provisions of extended period to issue the Show Cause Notice.

11. Accordingly, the impugned OIA is set aside and the Appeal is allowed with consequential relief, if any as per law.

(Dictated and pronounced in the open court.)

Sd/-

**(R. Muralidhar)**  
**Member (Judicial)**

Pooja