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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.78222 of 2018

(Arising out of Order-in-Appeal No.45-46/CE/RKL-GST/2018 dated 19.03.2018 passed by Commissioner (Appeals) of CGST & Excise, Bhubaneswar)

M/s Rathi Steel & Power Limited
Potapali & Sikirdi, P.O.-Kotapali, Dist.-Sambalpur, Odisha

Appellant

VERSUS

Commissioner of CGST & Excise, Rourkela
KK-42, Civil Township, Rourkela-769004

Respondent

WITH

Excise Appeal No.78237 of 2018

(Arising out of Order-in-Appeal No.45-46/CE/RKL-GST/2018 dated 19.03.2018 passed by Commissioner (Appeals) of CGST & Excise, Bhubaneswar)

M/s Rathi Steel & Power Limited
Industrial Area No.1, A-3, South of GT Road, Gaziabad, UP-201009

Appellant

VERSUS

Commissioner of CGST & Excise, Bhubaneswar
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha

Respondent

APPERANCE :

Shri Rajesh Chhibber, Advocate for the appellant
Shri J.Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO.75019-75020/2023

DATE OF HEARING : 01.02.2023
DATE OF DECISION : 01.02.2023

Per Ashok Jindal :

The appellant has filed these appeals against the impugned order wherein cenvat credit on input/input services used for generation of electricity supplied to GRID, was denied.

2. Briefly stated the facts of the case are that an Audit conducted on 17.12.2012 for the period 2012-2013,, wherein certain objections were raised which were answered. Thereafter, on 22nd December, 2015, show-cause notice was issued to the appellant for denial of cenvat credit on input/input services used for generation of electricity, which has been supplied out of the factory i.e. GRID. The authorities below confirmed the demand against the appellant. Aggrieved with the said orders, the appellant is before me.

3. The ld.Counsel for the appellant without going into the merits of the case, submits that as the audit took place on 17.12.2012 and the show-cause notices have been issued on 22nd December, 2015, which are highly barred by time from the period of limitation, the demands against the appellant are not sustainable. To support of his contention, he relied on the decision of the Hon'ble Allahabad High Court in the case of Commissioner of Central Excise Vs. Triveni Engineering Industries reported in 2015 (317) ELT 408 (All.) and Tribunal's decision in the case of JBM Auto Limited VS. Commissioner of Central Excise, Delhi IV in Appeal Nos.E/2248/2007-EX (DB) & E/2346/2007-EX (DB) vide Final Order No.60701-60702/2019 dated 18.02.2019, to say that the demand is barred by time limitation.

4. On the other hand, the ld.Authorised Representative for the Revenue, submits that the cenvat credit is not available on the appellants in view of the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki Limited Vs. Commissioner of Central Excise, Delhi III reported in 2009 (240) ELT 641 (S.C.) and the decision of the Hon'ble High Court of Gujarat in the case of Sintex Industries Limited Vs. Commissioner of Central Excise reported in 2013 (287) ELT 261 (Guj.). On limitation, he relied on the findings of the impugned order.

5. Heard and considered the submissions from both sides.

6. Without going into the merits of the cases, I find that in this case, the investigation was conducted against the appellants on 17.12.2012 and the show-cause notices were issued on 22nd December, 2015. Accordingly, the show-cause notices are highly barred by limitation as audit took place in 2012 and show-cause notices were issued after three years of the audit. In view of these facts and circumstances, I hold that all the demands against the appellants are barred by limitation. As the appellants have succeeded on limitation, therefore, I am not going into the merits of the cases.

7. In view of the above, both the appeals are disposed of.

(Dictated and pronounced in the open court)

Sd/

(Ashok Jindal)
Member (Judicial)

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