IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. E/87382/2017

(Arising out of Order-in-Appeal No. PUN-CT-APPII-000-78-17-18 dt. 11.07.2017 passed by the Commissioner (Appeals) Central Tax, Pune-II)

M/s. Ultratech Cement Ltd.	:	**Appellant**
VS		
Commissioner of GST & Central Excise, Pune	:	**Respondent**

Appearance

Ms. Anjali Hirawat, Advocate for Appellant

Shri Manoj Kumar, Asstt.Commr. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)

Date of hearing : 16/02/2018
Date of decision: 16/02/2018

ORDER NO. A/85588 / 2018

The appellant availed cenvat credit in respect of 'Diesel Hydraulic Shunting Locomotive' in the month of June 2013 and the same was intimated to the department vide letter dt. 6.8.2013 thereafter proof of correspondence were made between the department and the appellant. The show cause notice came to be issued only on 14.1.2016. The adjudicating authority confirmed the demand of cenvat credit which was upheld by the Commissioner (Appeals).

2. Ms. Anjali Hirawat, Learned Counsel appearing on behalf of the appellant, at the outset submits that the demand is clearly time barred as the credit was taken in June 2013 and the intimation thereof was made to the department on 6.8.2013. Show cause notice was issued after normal period of 1 year despite the entire fact was disclosed to the department, therefore the demand is time barred. She submits that even on merit also credit is admissible in the light of the following judgments:

(i) *Jayaswal Neco Ltd.Vs. CCE 2015 (319) ELT 247 (SC)*

(ii) Aditya Cement Vs. UOI 2008 (221) ELT 362 (Raj.)

(iii) Ultratech Cement Ltd. Vs. CC &CE 2016 (339) ELT 127 (Tri.-Hyd)

(iv) CCE, C & ST Vs. Bhusan Steel Ltd. 2012 (286) ELT 745 (Tri.-Kolkata)

(v) Jindal Steel & Power Ltd. Vs. CCE 2017 (352) ELT 235 (Tri.-Del.)

(vi) Hitachi Life & Solution India Ltd. Vs.CCE & ST 2014 (311) ELT 102 (Tri.-Chennai)

3. Shri Manoj Kumar Learned Assistant Commissioner (A.R.) appearing on behalf of the Revenue reiterates the findings of the impugned order. He placed reliance on the judgment of this Tribunal in the case of Hindustan Zinc Ltd. Vs. Commissioner of Cus. & C.Ex. Jaipur 2009 (235) ELT 289 (Tri.-Del.) whereby the Tribunal held that credit in respect of rail locomotive falling under heading 8602 is not admissible either as capital goods or inputs.

4. On careful consideration of the submissions made by both sides and perusal of the records, I find that the appeal can be

disposed of only on the point of limitation. The appellant have availed the credit in the month of June 2013 and thereafter they intimated to the department regarding the availment of credit on locomotive vide their letter dt. 6.8.2013 thereafter some correspondence were taken place between the department and the appellant. The invoice on which the credit was availed was also submitted on 26.8.2013 however the show cause notice was issued after the normal period of 1 year i.e. on 14.1.2016. With the above correspondence of the appellant, it is clear that they have not suppressed any fact as regard availment of credit of the locomotive therefore department should have issued the show cause notice within normal period of 1 year which the department failed to do so. Therefore the extended period is not available to the department for demand of cenvat credit. Therefore I set aside the impugned order and allow the appeal on the ground of time bar without going into the merit of the case.

(Pronounced & Dictated in court)

(Ramesh Nair)
Member (Judicial)

SM.