IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/86850/2016

[Arising out of Order-in-Appeal No: CD/307 & 308/Bel/2016 dated 29th February 2016 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II.]

VVF (India) Ltd …*Appellant*

versus

Commissioner of Central Excise
Belapur ***…Respondent***

Appearance:

Shri Karan Sarangi, Chartered Accountant for appellant

Shri MR Melvin, Superintendent (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 10/04/2018
Date of decision: 10/04/2018

ORDER NO: A/87069/2018

M/s VVF Ltd is in appeal against order-in-appeal no. CD/307 & 308/Bel/2016 dated 29th February 2016 of Commissioner of Central Excise (Appeals), Mumbai Zone – II which, while dropping the penalty imposed by the original authority, confirmed recovery of wrongly availed CENVAT credit to the extent of ₹ 14,553/- along with recovery of interest amounting to ₹ 261379/-.

2. It would appear that on the basis of audit report, various credits availed by them in the CENVAT account for the period from April 2005 to March 2011 was denied on various counts and the appellant had reversed the entire credit under dispute at the time of audit. Thereafter, show cause notice was issued on 12th August, 2014 for recovery of the wrongly availed credit and interest thereon besides seeking imposition of penalty. Appellant contests the confirmation of recovery of ₹ 14,553/- on the ground that demand of ₹ 6,499 was entirely beyond the period of limitation permissible under section 11A of Central Excise Act, 1944 and that recovery of ₹ 8,034 was beyond the normal period of limitation for which no justification required therein has been invoked. He contests the recovery of interest for the credit pertaining to the period beyond five years and place reliance on decision of Hon'ble High Court of Gujarat in *Commissioner of Central Excise and Customs, Vadodara – II v. Gujarat Narmada Fertilizers Co Ltd [2012 (285) ELT 336 (Guj.)]*.

3. Learned Authorised Representative opposed the plea that limitation would apply to the demand. According to him, before the first appellate authority the appellant had merely contested the recovery of ₹ 14,553/- and, having considered their contentions, liability under rule 14 of CENVAT Credit Rules, 2004 was upheld while setting aside the penalty in view of compliance with the **

obligation. He further submits that the lower authorities had rendered a finding on suppression and mis-representation and hence the claim that extended period cannot be invoked will not sustain.

4. The recovery for period beyond five years of ineligible credit amounting to ₹ 6,499/- is set aside as also interest for the period beyond five years.

5. In relation to demand within the extended period of limitation, it is seen that the first appellate authority has placed reliance upon the decision of Hon'ble High Court of Chhattisgarh in *Commissioner of Central Excise, Raipur v. Vandana Vidyut Ltd [2016 (331) ELT 231 (Chh.)]* and of the Tribunal in *Commissioner of Central Excise, Allahabad v. Balrampur Chini Mills Ltd [2014 (300) ELT 449 (Tri.-Del.)]* but has, nevertheless, set aside the penalty. In these circumstances the claim of the Learned Counsel that the extended period is not invokable does not sustain. Consequently, the interest calculation should be re-worked accordingly, taking into account the findings above as well as the decision of the Hon'ble High Court of Gujarat in *Commissioner of Central Excise& Customs, Vadodara – II v. Gujarat Narmada Fertilizers Co Ltd (supra)*

6. The appeal is accordingly disposed off.

(Dictated in Court)

(C J Mathew)
Member (Technical)

**/as*