CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No.

Excise Appeal No. 88950 of 2018

(Arising out of Order-in-Appeal No. MKK/172/RGD-APP/2018-19 dated 27.06.2018 passed by Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigad)

M/s. Pepsico India Holding Pvt. Ltd. **Appellant**
Plot No.100/1, MIDC Area,
Dhatav, Roha,
Raigad 402 116.

Vs.

Commissioner of C.E. & S.T., Raigad **Respondent**
4th floor, Kendriya Utpad Shulk Bhawan,
Plot 01, Sec. 17, Khandeshwar,
Raigad 410 206.

Appearance:

Ms. Anjali Hirawat, Advocate for the Appellant
Shri N.N. Prabhudesai, Authorised Representative for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

FINAL ORDER NO. **A/86537/2019**

Date of Hearing: 29.07.2019
Date of Decision: 29.07.2019

Heard both sides and perused the records.

2. Denial of cenvat credit of service tax availed on the strength of invoices/bills issued after six months is the subject matter of present dispute. Department has denied cenvat credit on the ground that as per the fifth proviso appended to sub-rule (7) of Rule 4 of the Cenvat Credit Rules, 2004, the manufacturer or the service provider was not permitted to take cenvat credit after a period of six months from the date of

issue of the documents, specified in sub-rule (1) of Rule 9 *ibid*. I find that the issue arising out of the present dispute is no more *res integra* in view of the decision of this Tribunal in the case of *Voss Exotech Automotive Pvt. Ltd. vs. CCE, Pune-I*, reported in *2018 (3) TMI 1084-CESTAT Mumbai*. The relevant paragraph in the said order is extracted herein below:-

*“**4.** On careful consideration of the submissions made by both the sides, I find that for denial of the credit, the Notification No. 21/2014-C.E. (N.T.), dated 11-7-2014 was invoked wherein six months period is available for taking credit. As per the facts of the case credit was taken in respect of the invoices issued in the month of March & April 2014 in November 2014. On going through the Notification No. 6/2015-C.E. (N.T.), dated 1-3-2015 the period available for taking credit is 1 year in terms of the notification, the invoices issued in the month of March and April 2014 become eligible for Cenvat credit. I also observed that the Notification No. 21/2014-S.T. (N.T.), dated 11-7-2014 should be applicable to those cases wherein the invoices were issued on or after 11-7-2014 for the reason that notification was not applicable to the invoices issued prior to the date of notification therefore at the time of issuance of the invoices no time limit was prescribed. Therefore in respect of those invoices the limitation of six months cannot be made applicable. Moreover for taking credit there is no statutory records prescribed the assessee’s records were considered as account for Cenvat credit. Even though the credit was not entered in so-called RG-23A, Part-II, but it is recorded in the books of accounts, it will be considered as Cenvat credit was recorded. On this ground also it can be said that there is no delay in taking the credit. As per my above discussion, the appellant is entitled for the Cenvat credit hence the impugned order is set aside. The appeal is allowed.”*

3. In view of the above decision of the Tribunal, I do not find any merits in the impugned order passed

by the learned Commissioner (Appeals). Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

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