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

Application No. E/ROA/92953/17
Appeals No. E/2294/06

Windals Auto Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Mumbai V **Respondent**

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Appeal No. E/378/2007

Commissioner of Central Excise, Mumbai V **Appellant**

Vs.

Windals Auto Pvt. Ltd. **Respondent**

(Arising out of Order-in-Original No. 312/39/V/2006/COMMR/RH dated 21.04.2006 passed by Commissioner of Central Excise, Mumbai)

Appearance:

Shri VinodAwtani, C.A. for appellant
Shri N.N. Prabhudesai, Supdt. (AR) for respondent

CORAM:

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

Date of Hearing&Decision: 11.09.2018

FINAL ORDER NO. **A/88504-88505 / 2018**

Per: S.K. Mohanty

The applicant/appellant has filed the Misc. application for restoration of appeal, which was dismissed by the Tribunal vide Order dated 29.04.2014. On perusal of the said application, I find that the Hon'ble Bombay High Court vide order dated

20.09.2017 have already ordered for restoring the appeals to the file of the Tribunal. Hence, no separate order is required to be passed on the present Misc. application. Accordingly, the same is disposed of and the appeal is taken up for disposal on merits.

2. Brief facts of the case are that the appellant is engaged in manufacture of automobile parts, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant had availed Modvat credit of Central Excise duty paid on HR/CR Coils/Sheets/Plates under erstwhile Rule 57A read with Rule 57AA of Central Excise Rules, 1944. During the disputed period, the assessee-appellant had manufactured 'Front Axle' for the vehicles belonging to M/s Mahindra & Mahindra. The front axle manufactured by the appellant required the specification of M.S.Sheets of 6 mm. The appellant procured the sheets from the dealers / brokers who purchased the same from 1st stage/2nd stage dealers or the manufacturers. The Officers of Directorate General of Central Excise Intelligence(DGCEI) gathered information that the appellant had availed Modvat credit on the basis of invoices procured for HR/CR coils/plates/sheets of particular thickness, which arenot required for manufacture of their final product i.e. Front Axle. Accordingly, the department initiated show cause proceedings against the assessee-appellant, seeking for denial of irregular Modvat credit availed by it. The matter was initially adjudicated by order dated 25th January' 2002, wherein out of 176 disputed invoices, the adjudicating authority had allowed Modvat benefit in respect of 154 invoices and denied Modvat benefit on remaining 22 invoices. Feeling aggrieved with the adjudication order dated 25.01.2002, the assessee-appellant had filed appeal before the Tribunal. Revenue has also assailed the impugned order before the Tribunal on the ground that the appellant should not be eligible for the Modvat benefit in respect of the entire 176 invoices, based on which Modvat credit was availed by it. The appeal filed by the assessee-appellant was disposed

of by the Tribunal vide final order No. A/127/WZB/2004/C-II dated 05.04.2004, in remanding the matter to the adjudicating authority for limited purpose of determining of fact, whether extended period of limitation can be invoked under the circumstances of the present case. Appeal filed by Revenue was also disposed of by Tribunal vide final order No. A/24/WZB/05/C-I dated 31.12.2004 in remanding the matter to the adjudicating authority for a decision in line with the earlier order dated 05.04.2004, referred supra. Pursuant to the remand direction of the Tribunal, learned Commissioner of Central Excise took up denovo adjudication proceedings and passed the present impugned order dated 21.04.2006, in disallowing the Modvat credit amounting to Rs.39,63,167/- along with interest. The impugned order also imposed penalty of Rs.33,41,118/- on the appellant. Being not satisfied with the impugned order dated 21.04.2006, both the assessee-appellant as well as Revenue has preferred these appeals before the Tribunal.

3. It has been contended by the assessee-appellantthat it had earlier purchased M.S.Sheets of 6mm thickness which were required for manufacturing of Front Axle. Thus, it is submitted that since the assessee did not purchase the specifications of sheets, other than 6 mm in thickness, denial of Modvat benefit by the original authority is not proper and justified. The appellant also contended that show cause proceedings initiated by the department are barred by limitation of time inasmuch as the activities undertaken by the appellant were informed to the department through filing of RT-12 Returns, Modvat invoices duly defaced upon verification, correspondences exchanged between the appellant and the department etc. Thus, it is contended that the adjudged demand confirmed against the appellant cannot be sustained on the ground of limitation.

4. Revenue has assailed the impugned order on the ground that dropping of the proposals for imposition of penalty on Shri

Uday kumar Vinzanekar, Director of the assessee Company is not legal and proper inasmuch as he was instrumental in availing fraudulent Modvat credit by the appellant. Thus, it has been contended by Revenue that the said Director of the Company is exposed to penal consequences provided under Rule 209A of the erstwhile Central Excise Rules, 1944.

5. Learned Consultant appearing for the assessee-appellant submits that since the appellant manufactured Front Axle by using 6 mm M.S. sheets, there was no requirement of purchasing any other specification of sheets, other than the said required material. Thus, he submits that denial of Modvat benefit by adjudicating authority is not proper and justified.

5.1 With regard to the limitation aspects, learned Consultant submits that the appellant had disclosed its entire activity of procuring M.S sheets, manufacturing of final product etc. through periodic returns filed before the Central Excise authorities and upon scrutinizing the documents / invoices, the Jurisdictional Range Officer has defaced the disputed invoices. Thus, he contended that since the facts regarding the use of M.S Sheets for manufacture of Front Axle was known to the department much before issuance of show-cause notice, the same should have been issued within the normal period of limitation. Accordingly, he submits that since the show-cause notice has been issued beyond the normal period, same is barred by limitation of time and adjudged demand confirmed based on the proposals made therein is not sustainable. To support such stand, the learned Consultant has relied upon the decision of this Tribunal in the case of *Kothari Products – 2002 (148) ELT 1056 (Tri. – Del.)*, *Silence Auto – 2014 (307) ELT 339 (Tri. – Del), KLJ Polymers & Chemicals Ltd. – 2008 (231) ELT 57 (Tri. – Ahmd.) and EM ESS Electricals – 2003 (159) ELT 730 (Tri.– Del).* He also relied on the judgment of Hon'ble Gujarat High Court in the case of *Prayagraj Dyeing & Printing Mills Pvt.*

Ltd.. – 2013 (290) ELT 61 (Guj.) to state that since availment of credit was not due to fraud, collusion, willful mis-statement etc, the extended period should not be invoked for confirmation of the adjudged demand.

6. Heard both sides and examined the case records.

7. In the initial ground of litigation, the Tribunal vide order No. A/126/WZB/2004/C-II dated 05.04.2004 had remanded the matter to the original authority with the following observations:-

> *"3. One of the points that the appellant had taken in the reply to the notice was that the extended period of limitation will not be available to the department. The fact that the sheets in question were of the thickness of less than 6 mm would be evident from the invoices, copies of which were attached, along with extracts of the RG23A register to the return filed in the next month. The RT12 returns have been assessed and the departmental offices also visited the factory of the assessee. The fact of utilization of credit therefore was well within the department's knowledge.*
>
> *4. The Commissioner's order has not dealt with this aspect and is entirely silent on it. We are of the view that the Commissioner should deal with it now, as he was required to do so earlier.*
>
> *5. The appeal is accordingly allowed, and the matter remanded to the Commissioner for this limited purpose and for determining the consequent liability to duty and penalty, if any, to the appellant."*

7.1 On perusal of the order dated 05.04.2004, it is observed that the scope of remand was limited to the extent of ascertaining the issue, whether the proceedings are barred by limitation or not. The appeal filed by Revenue was also allowed by way of remand to the original authority for re-adjudication, in line with the order dated 05.04.2004 passed in the case of the assessee-appellant. Pursuant to the remand direction by the Tribunal, the original authority completed denovo adjudication proceedings and passed order dated 21.04.2006 (impugned herein), in disallowing Modvat credit availed by the appellant.

8. I find that the show-cause notice dated 3rd November, 2000, had enclosed the statement at Annexure-A, mentioning the thickness / gauge of M.S. sheets procured by the appellant during the disputed period for the manufacture of final product. The said annexure confirmed that in some cases, the thickness was not confirming to the required size of 6 mm and in some other cases, it has been described that there is no mention about the thickness in the invoices. For ascertaining the correct position regarding the thickness of coils supplied by the dealers to the appellant, I have perused some of sample copy of invoices available in the case records. Invoice No. 449 dated 19.11.1998 issued by Jaydev Steels bears the reference of the invoice issued by the manufacturer M/s Uttam Steel Ltd., classifying H.R. Coil under Tariff Heading 7208.39. Strips have been classified under Tariff Entry 7208.31, providing the description as “exceeding 5mm in thickness”. Other category ofstripis classified under 7208.39. On perusal of both the tariff entries i.e. 7208.31 and 7208.39, it reveals that the goods under the later heading only covers the strips of not exceeding 5 mm. Thus, it is evident from the invoice dated 19.11.1998 that the appellant had purchased H.R. Coils of below 5 mm in thickness, which was not suitable for use in the manufacture of automobile axle. Since the original authority has recorded specific findings in denying the Modvat benefit to the appellant and more specifically, proceeded for the issue of limitation on the basis of the observation of the Tribunal recorded vide order dated 05.04.2004, I am of the view that I should confine myself to address the issue, whether the proceedings initiated by the department are barred by limitation of time or not.

9. Requirement of 6 mm size of H.R. coils for manufacture of automobile axle was not within the knowledge of the department and the same was subsequently gathered by the officers of DGCEI. The stand taken by the appellant is to the effect that since the appellant regularly filed RT-12 Returns and the purchase invoices were duly verified by the Range office from time to time,the extended period of limitation cannot be invoked. I do not at all appreciate with such submissions of the appellant inasmuch as the statutory return has not been designed in the way that the same should capture the particular grade/specification of material required for manufacture of the resultant final product. Further, verification of invoice by the jurisdictional Range office is with the objective of ascertainment of correct avalment of Modvat credit and not otherwise.Upon proper investigation,since the officers of DGCEI came to know about the actual requirement of thickness of H.R. Coils in manufacture of final product and thereafter, proceedings were initiated against the appellant within the normal period prescribed under erstwhile Rule 57(1) of the Central Excise Rules, 1944 read with Section 11A of the Central Excise Act, 1944, I am of the considered view that the adjudged demands confirmed in the impugned order by invoking the extended period of limitation can stand for judicial scrutiny. Therefore, I do not find any infirmity in the impugned order, so far as it confirmed the adjudged demand against the appellant.

10. With regard to the appeal filed by Revenue regarding imposition of penalty on ShriUdaykumarVinzanekar, Director of the assessee Company, I find that the original authority has recorded the findings that Revenue had not made the said Director as respondent during the course of initial show cause proceedings and, accordingly the Tribunal vide order dated 31.12.2004 had not specifically recorded any findings with regard to imposition of penalty on such Director. Further, in the present appeal petition, the Revenue has also not made such

Director as party to the appeal. In absence of non-filing of any specific appeal by Revenue, I am of the view that setting aside of proposal for imposition of penalty on the Director cannot be interfered with at this juncture.

11. In view of the foregoing discussions, I do not find any merits in the appeal filed by the assessee-appellant. Further, I also do not find any merits in the appeal filed by Revenue. Accordingly, both the appeals filed by the assessee and the Revenue are dismissed.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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