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

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 89151 of 2018

(Arising out of Order-in-Appeal No. NGP-II/APPL/141/17-18 dated 27.06.2018 passed by Commissioner of CGST & Central Excise, Commissionerate Nagpur-II)

M/s Pepsico India Holding Pvt. Ltd. .....**Appellant**
Plot No. D-7, MIDC, Paithan,
Aurangabad-431148

VERSUS

Commissioner of Central Excise & Service Tax, Aurangabad .....**Respondent**
N-5, Town Centre, CIDCO,
Aurangabad, Maharashtra-431030

Appearance:

Ms. Anjali Hirawat, Advocate for the Appellant
Shri Sanjay Hasija along with Shri Anil Choudhary, Authorized Representatives for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87690/2019

Date of Hearing: 19.09.2019
Date of Decision: 19.09.2019

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 27.06.2018 passed by learned Commissioner (Appeals), CGST & Central Excise, Nagpur.

2. Brief facts of the case are that the appellant herein is engaged in manufacture of Aerated Water – Beverages/Soda, falling under Chapter 22 of the Schedule to the Central Excise Tariff Act, 1985. The appellant avails Cenvat credit of Central Excise duty paid on the inputs, capital goods and service tax on the input services under the provisions of Cenvat Credit Rules, 2004. During the disputed period, the appellant had availed Cenvat credit amounting to Rs.87,81,790/- on common input services viz. security service, manpower service, GTA, courier

service, business support service etc., which were used by it in the manufacture of dutiable goods, exempted goods as well as trading activities in the month of June 2013. The disputed Cenvat credit was availed on the basis of ISD invoices. On scrutiny of records, the department observed that the appellant had not followed the procedure laid down under Rule 6 (3) of the Cenvat Credit Rules, 2004. After detection of such irregularity, the appellant had paid the due amount of Rs.46,58,645/- on 30.04.2014. However, the appellant did not pay the interest amount for delayed reversal of Cenvat credit and penalty. Accordingly, the department issued the show cause notice dated 25.04.2016, seeking for recovery of the amount of interest and penalty from the appellant. The matter was adjudicated vide order dated 09.12.2016, wherein the proposals made in the show cause notice were confirmed. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 27.06.2018 has upheld the adjudication order and rejected the appeal filed by the appellant. Against the said impugned order, the appellant has preferred this appeal before the Tribunal.

3. The learned Advocate appearing for the appellant submitted that the adjudged demands confirmed on the appellant cannot be sustained on the ground of limitation. In this context, she submitted that the period of dispute was June 2013 and the show cause notice was issued on 25.04.2016, which was clearly barred by limitation of time as per the provisions of Section 11A of the Central Excise Act, 1994. Further, she submitted that the disputed Cenvat credit taken by the appellant had not been utilized for payment of Central Excise duty on the finished products manufactured by the appellant. Thus, she submitted that the charges of suppression, collusion, fraud, etc., cannot be leveled on the appellant, justifying invocation of the extended period of limitation.

4. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. It is an admitted fact on record that based on the books of accounts maintained by the appellant, the audit wing of the department had observed the irregularities in availment of Cenvat credit by the appellant and that upon detection of such irregularity, the appellant had suo moto reversed the Cenvat credit before issuance of the show cause notice. Further, it is also observed that the excess Cenvat credit availed by the appellant had not been utilized for payment of Central Excise duty on the final products removed from the factory. Thus, under such circumstances, the allegation of suppression, fraud, collusion, etc., cannot be made on the appellant for issuance of show cause notice beyond the normal period prescribed under Section 11A *ibid.* Hence, I am of the considered view that the provisions of Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004 cannot be sustained for demand of interest from the appellant. Further, Rule 15 *ibid* read with Section 11AC *ibid* cannot also be invoked for imposition of equal amount of penalty on the ground of limitation. However, the benefit of limitation provided under Section 11A *ibid* will not be available to the appellant in respect of the Cenvat credit reversed by it voluntarily and such aspect has specifically not being contested in this appeal.

7. In view of above, the impugned order to the extent it has upheld the adjudication order for recovery of interest and imposition of penalty on the appellant is set aside and the appeal to such extent is allowed in its favour.

8. The appeal is disposed of in above terms.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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