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

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 89092 of 2018

(Arising out of Order-in-Appeal No. NGP-II/APPL/131/17-18 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/87689/2019

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, CGST & Central Excise, Nagpur.

2. Brief facts of the case are that the appellant herein is engaged in manufacture of carbonated fruit drinks, falling under Chapter 22 of the Schedule to 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 excess/double Cenvat credit, which was reversed upon detection of such mistake by the audit wing. The appellant also paid part interest on delayed reversal of Cenvat credit. The department issued show cause

notice dated 07.12.2015 to the appellant, seeking for reversal of Cenvat credit, payment of interest at the applicable rate and for imposition of penalty. The matter was adjudicated vide order dated 08.12.2016, wherein the original authority had confirmed Cenvat demand of Rs.5,25,966/- along with interest amounting to Rs.88,909/- and also imposed equal amount of penalty on the appellant. The duty paid before adjudication of the matter was appropriated in the order dated 08.12.2016. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 27.06.2018 has upheld the original order and rejected the appeal filed by the appellant.

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 from April 2013 to October 2013 and the show cause notice was issued on 07.12.2015, 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 prior to issuance of the show cause notice, based on the audit report issued by the department, the appellant had reversed the disputed Cenvat credit and the said fact is evident from the show cause notice dated 07.12.2015, wherein the department had proposed to appropriate Cenvat credit already reversed by the appellant. I find that after one year from the date of the audit report, the

department had initiated show cause proceedings against the appellant, seeking for recovery of the interest amount and for imposition of penalties. Insofar as issuance of show cause notice is concerned, Section 11A of the Central Excise Act, 1944 mandates that in case of short levy, non levy, non paid, short paid duty etc., show cause notice has to be issued within one year from the relevant date. However, in case of suppression, fraud, willful misstatement, with intent to evade the payment of duty, such section provides that instead of the normal period of one year, the proceedings can be initiated under extended period of limitation of 5 years. On a reading of the provisions contained in various sub-sections in Section 11A *ibid,* it transpires that on fulfilling the ingredients mentioned under sub-section (4) of Section 11A, the department is permitted to issue the show cause notice within a period of 5 years from the relevant date. Admittedly, in these cases, the department had not brought on any iota of evidence to show that the appellant was indulged into fraudulent activities in availing the irregular Cenvat credit. Thus, in my considered view, the extended period of limitation provided under sub-section (4) of Section 11A of the Act cannot be invoked on the appellant, seeking for recovery of irregularly availed Cenvat credit along with interest and for imposition of penalty.

7. In view of above, the adjudged demands upheld in the impugned order cannot be sustained on the ground of limitation. Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellant.

8. The appeal is disposed of in above terms.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

HK