IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

CENTRAL EXCISE APPEAL NO.10 OF 2015

Commissioner of Customs,
Central Excise & Service Tax ... APPELLANT

VERSUS

M/s NRB Bearing Ltd. ... RESPONDENT

.....

Dr. Mrs. Kalpalata Patil Bharaswadkar, Advocate for appellant
Shri Dwarkadas S. Ladda, Advocate for respondent

.....

CORAM: S.V. GANGAPURWALA AND A.I.S. CHEEMA, JJ.

DATED: 10th April, 2015.

ORAL ORDER :

1. Mrs. Bharaswadkar, learned counsel for the appellant submits that, the CESTAT, while dismissing the appeal filed by the appellant, has on altogether erroneous count, failed to consider the case put forth by the appellant. Only on the ground that the show-cause-notice mentioned the word "intentionally and wrongly", the Tribunal has failed to exercise the jurisdiction

vested in it. Both the words cannot be said to be contrary. Intentionally the wrong entries were made. The Tribunal has committed an error in considering the said aspect. According to the learned counsel, just because the show-cause-notice has been issued after 16 months, the same cannot be said to be barred by limitation more particularly when it is a case of intentional, willful misstatement, fraud or collusion, in such case, period of limitation stands extended. This aspect has also not been considered in correct perspective by the Tribunal. According to the learned counsel, the assessing authority had rightly passed the order imposing penalty by invoking Section 11-A on the Central Excise Act.

2. Heard the learned counsel for the respondent.

3. The Commissioner (Appeals) has considered the facts and circumstances threadbare. After considering the facts and circumstances, it has been observed by the Commissioner that the assessee had not taken the said credit to meet the payment of the duty. The adjudicating authority i.e. assessing authority failed to establish that there was any mens rea on the part of the assessee in intentionally raising the credit. The wrong credit was taken on 14.7.2014 and it was reversed on 31.10.2003. The

lapse was continued only for 3 ½ months. Even the interest is paid on 3.11.2003.

4. Though we may not subscribe to the reasoning given by the CESTAT that "intentional" and "wrong" are both contrary words, however, considering the fact that the Commissioner (Appeals) has discussed in detail that there was absence of mens rea and the same is also established by the facts and circumstances on record, the appeal as such is not entertained and is disposed of.

(A.I.S. CHEEMA, J.) (S.V. GANGAPURWALA, J.)

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