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HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 01 Of 2016

Commissioner, Central Excise & Customs Raipur , Chhattisgarh

---- Appellant

Versus

M/s Bhoramdeo Sahakari Shakkar Utpadak Karkhana Maryadit Ramepur , P.O. Kawardha, Distt. Kabirdham, Chhattisgarh

---- Respondent

Tax Case No. 20 Of 2016

Commissioner, Central Excise & Customs Raipur

---- Appellant

Vs

M/s Bhoramdeo Sahakari Shakkar Utpadak Karkhana Maryadit Ramepur , P.O. Kawardha, Distt. Kabirdham, Chhattisgarh

---- Respondents

For Appellant : Shri Vinay Pandey, Advocate.
For Respondent : Shri Rakesh Dubey, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

Judgment on Board

Per Deepak Gupta, Chief Justice

24/10/2016

1. Both these appeals are directed against the orders of the Customs, Excise, Service Tax Appellate Tribunal (hereinafter called as 'CESTAT') whereby the CESTAT had held that the notice issued to the assessee is beyond the period of limitation and hence has quashed the same.

2. The undisputed facts are that the assessee is a manufacturer of Sugar and Molasses. It claimed and utilized CENVAT credit for the period June-2002 to January-2006 on steel and other material utilized by it for construction of the plant in which the Sugar and Molasses were to be manufactured. In 2006 itself assessing officer sent a notice to the assessee asking it to furnish documents to show on what basis it was claiming CENVAT credit on the construction items.

3. According to the Revenue, no reply was received to the notice and thereafter on 15.2.2008, a specific notice was sent that the assessee had claimed CENVAT credit on construction items like M.S. beams, channels, angles, flats, joists, etc. which were not eligible for CENVAT credit as they were not directly related to Sugar and Molasses but only to be used for construction buildings.

4. Section 11A(3) of the Central Excise Act, 1944 provides limitation of one year to the Central Excise Officer to issue notice to the assessee. However sub-section (4) provides that when there is fraud; collusion; any willful mis-statement; suppression of fact and contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, the period of limitation will be five years.

5. The CESTAT held that sub-section (4) was not attracted because the items which were used on the face of it could not used for manufacutre Sugar and Molasses and the assessee had not suppressed any facts or mis-stated any facts and therefore, limitation would be one year and not five years. This is a pure finding of fact and no question of law much less any substantial question of law arises in these two appeals. The question of limitation may in certain cases be a mixed question of law and fact but it not a substantial question of law.

6. Even otherwise, we are of the considered view that the view taken by the CESTAT is correct. The assessee has not withheld any fact; the assessee has not mis-stated any fact; the assessee has not suppressed any facts. The assessee may have been guilty of claiming wrong CENVAT credit but as pointed out by the CESTAT, there continues to be divergence of opinion with regard to the issue whether CENVAT credit can be claimed on the inputs used for setting up the factory in which goods were manufactured. Therefore, it cannot be said to be a fraudulent claim or a claim which has an aspect of dishonesty attached to it. In this view of the matter, limitation would only be one year.

7. We therefore find no merit in the appeals. The appeals are dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
Judge

Anu