

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Central Excise Appeal No. 6 of 2016 (O&M)
Date of decision: 23.11.2016

Commissioner, Central Excise & Service Tax

.. Appellant

v.

Amba Poly Chrome P. Ltd.

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Tajender K. Joshi, Advocate for the appellant.
Mr. Jagmohan Bansal, Advocate for the respondent.

...

Rajesh Bindal J.

The revenue is in appeal against the order dated 22.5.2015, passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal') raising the following substantial questions of law:

- “(i) Whether the Hon'ble Tribunal's order is liable to be set aside in view of the fact that the same has been passed without affording an adequate opportunity of hearing to the representative for the revenue and without considering the submissions and case law relied upon by the revenue and without considering the findings of the adjudicating authority and the first appellate authority?
- (ii) Whether the Ld. CESTAT has erred in concluding that the extended period of limitation was not invocable in the

present case completely ignoring the fact that the respondents had willfully suppressed the material facts from the department with the intent to evade payment of duty ?

- (iii) Whether the CESTAT has erred in holding that the allegation of wrongful availment of CENVAT credit would only mean that the same was taken by mistake ?”

The issue involved is regarding invocation of extended period of limitation. The respondent in the present case had claimed CENVAT credit, which it was found to be not entitled to. The period involved is from June, 2007 to April, 2009. Notice was issued on 18.2.2011. The Tribunal, while accepting the appeal filed by the assessee, referred to an earlier order passed by it in CCE, Aurangabad v. Yashwant Industries, [2014 (313) ELT 667 (Tri-Mum)] and Rajasthan State Warehouse Corpn v. CCE Jaipur, [2011 (23) STR 385 (Tri-Del)]. Learned counsel for the appellant was not able to point out as to whether any appeal was filed by the revenue against the aforesaid orders.

Another fact, which is not in dispute, is that books of accounts of the assessee were audited by the department thrice. On first two occasions, it was not found out even by the audit team that there was any suppression of facts by the assessee. Only on the third occasion, the audit team raised the issue. Learned counsel for the assessee referred to Raj Kumar Forge Limited v. Union of India, 2010 (262) ELT 155 (Bom.) and Commr. of Cus. & C. Ex., Ghaziabad v. Rathi Steel & Power Ltd., 2015 (321) ELT 200 (All.), where invocation of extended period of limitation on the audit objection was not permitted. It is not in dispute that complete facts

were being mentioned by the assessee in the return filed or being shown in the books of accounts. The judgment of Gujarat High Court in Commissioner of C. Ex., Surat-I v. Neminath Fabrics Pvt. Ltd., 2010 (256) ELT 369 (Guj.), relied upon by learned counsel for the revenue, is distinguishable as it was not a case where the issue was raised on an audit objection.

For the reasons mentioned above, we do not find that any substantial question of law arises in the present appeal. Accordingly, the same is dismissed.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

23.11.2016
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No