NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 06 Of 2017

Commissioner, Central Excise, Customs & Service Tax, Raipur.

---- Appellant

Versus

Shri Nakoda Ispat Limited, Plot No. 109, Phase II, Industrial Growth Centre, Siltara, Raipur (C.G.)

---- Respondent

For Appellant : Shri Vinay Pandey, Advocate.

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

Judgment on Board

Per Deepak Gupta, Chief Justice

30/01/2017

1. This appeal is 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 respondent is the manufacture of Sponge Iron and claimed CENVAT credit on the structural items like MS Angles, MS Channels, MS Joists, MS Bars, MS Flats etc. The assessment relates to the year 2004-2008 and notice was issued on 7.7.2008.

3. The short question which arises in this appeal is whether notice was issued within the period of limitation ?

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 during the relevant period, the decision was in favour of the assessee which was upset later on. Furthermore, there was no willful mis-statement of facts. This finding of the Tribunal is a pure finding of fact and no question of law much less any substantial question of law arises in this appeal. 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 such inputs or not. 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 appeal. The appeal is dismissed.

Sd/-	Sd/-
(Deepak Gupta)	(Sanjay Agrawal)
CHIEF JUSTICE	**Judge**

Anu