HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE T.AMARNATH GOUD

CEA.No.206 of 2017

Date:08.12.2017

Between:

The Commissioner of Customs, Central
Excise and Service Tax, Hyderabad.

.....Appellant

And:

M/s Unimetal Alloys Ltd.,
Hyderabad.

.....Respondent

Counsel for the appellant: Mr. B.Narasimha Sarma
Senior Standing Counsel for Central Excise,
Customs and Service Tax

The Court made the following:

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This appeal arises out of Final Order No.A/30492/2016, dated 18.5.2016, in Appeal No.E/43/2000 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench, Hyderabad (for short 'the CESTAT'), whereby it has set aside the orders of the original and the first appellate authorities disallowing the MODVAT credit on iron scrap on the ground that scrap dealer, from whom the assessee purchased the iron scrap, did not produce the original Invoice.

This case has had a chequered history, in that, the earlier orders of the appellate authorities were set aside and the matter was remanded by this Court to the CESTAT. After remand, the CESTAT while allowing the appeal of the respondent-assessee rendered the following findings:

> "The appellant purchased scrap (inputs) from dealers who in turn purchased it from TISCO yard under delivery challan duly singed by the consignment agent of TISCO and counter signed by the TISCO yard-in-charge. The objection of the Revenue in allowing credit is that the document on which credit is availed are not proper as it was not signed by proper officer of TISCO. It is not disputed that the said documents were filed along with RT-12 returns and were defaced by the concerned Range Superintendent. On the face of the document itself, the nature of document and the transaction conducted is revealed. It does not require any

> detailed scrutiny. The duty paid on the inputs is also not disputed. This apart, we have to say that when the duty paid documents are defaced by the Range Superintendent, thereby approving the documents to be correct and proper, then the department cannot later turn around and contend that the documents do not satisfy the requirements for availing credit and that appellant is guilty of suppression of facts. The appellant had disclosed the details of credit availed in the RT-12 returns and necessary documents were also filed. On this score, the allegation that appellant has committed suppression of facts is baseless. The show cause notice issued raising the demand beyond the normal period of six months is therefore unsustainable. In view, therefore, we hold that the demand is time barred. The issue of limitation is answered in favour of the appellant/assessee. The issue of limitation having been answered in favour of assessee, we do not think it necessary to enter into the merits of the case. In arriving at the above conclusion we have sustenance from the decision of the Tribunal in M/s Nirma Ltd Vs. CCE, Ahmedabad Final Order No.A/884/2005WZB/C-IV, dated 06.7.2005 in appeal No.E/1361/2006-Mum."

In the light of the findings rendered by the CESTAT that the entire material was available before the Range Superintendent concerned before allowing the MODVAT credit, the respondent cannot be blamed for suppression of facts and that, therefore, the extended period of limitation beyond the normal period of six months for initiating proceedings for recovery of the purported wrongly availed MODVAT credit was not available to the Revenue.

In our opinion, the aforesaid conclusion drawn by the CESTAT is based on findings of fact. Therefore, no substantial question of law arises for consideration in this appeal, which is, accordingly, dismissed.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE T.AMARNATH GOUD

08th December 2017
DR