NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 14 of 2013

Commissioner, Central Excise, Raipur (CG) **---- Appellant**

Versus

M/s Modi Cement Limited (Now M/s Ambuja Cement Ltd.) PO & Village-Rawan, Distt. Baloda Bazar, Chhattisgarh, Pin- 493331 **--- Respondent**

For Appellant	:	Mr. Vinay Pandey, Advocate
For Respondent	:	None appears

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order On Board

23/07/2018

Heard.

1. In view of order dated 11.10.2012 passed by this Court in CER No.1/2000 following question of law has been referred to us for our opinion :

> "Whether the respondent-assessee was entitled to claim modvat credit in respect of HDPE Woven Bags/ Sacks received by them during October, 1987 to October, 1990 and if so, whether the finding recorded by Tribunal on this issue is legally or factually sustainable ?"

2. Learned counsel for the appellant contended before us that even if it were to be accepted as an undisputed position that the classification of HDPE Bags was resolved by Board's letter dated 25.09.92, classifying HDPE bags under Chapter 39 and not under Chapter 63, the respondent-assessee was not entitled to benefit of Modvat credit in respect of HDPE bags for packing prior to 17.09.90 as credit has to be availed within a reasonable time and it could not be availed and benefit claimed as of right beyond reasonable period. The submission of learned counsel for the Revenue-Central Excise that the reasonability of the period within which the respondent-assessee could claim benefit of Modvat credit was not satisfied by the assessee, therefore, he was not entitled to avail Modvat credit.

3. Learned Tribunal has examined the aspect of reasonability by taking into consideration various decisions including its own decision in the case of **Collector of Central Excise Madras vs. Tamil Nadu Petro Products,** 1996(84) ELT. 263 and the decision of the Apex Court in the case of **Government of India Vs Citadal Fine Pharmaceuticals, 1989 (42) ELT 515 (SC),** that reasonable time should be read into all enactments and further that in the present case, the assessee had taken the credit within six months of the first publication of decision of the Tribunal in the case of **Collector of Central Excise, Bhubaneswar V. Orissa Cement Ltd., 1994 (69) ELT 537.**

4. The legal position which appears to be well settled by the Apex Court in the case of **Government of India Vs. Citadel Fine Pharmaceutical, 1989(42) ELT. 515** that what would be the reasonable time, would depend on the facts of each case. The issue regarding reasonability in the present case has been decided by the Tribunal taking into consideration certain material circumstances including publication of decision in the case of *Collector of Central Excise Bhubaneswar (supra)*, which cannot be said to be an extraneous consideration. Once relevant circumstances is taken into consideration to form an opinion with regard to reasonability of period within which the assessee had taken the Modvat credit, we are not inclined to interfere with the said decision of the Tribunal as does not suffer from any error of law nor appears tobe against any settled legal principal governing the field.

5. The Reference is accordingly answered.

6. A copy of this order shall be forwarded with the records to the Tribunal for further action.

Sd/-	Sd/-
(Manindra Mohan Shrivastava)	**(Rajani Dubey)**
Judge	Judge

Rekha