(2021) 08 CESTAT CK 0113

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 60245, 60249, 60272, 60273, 60274 Of 2021

Boistadt India Ltd. And Ors. — APPELLANT

Vs

CG And ST- Jammu — RESPONDENT

Date of Decision : 18-08-2021

Acts Referred:

Citation : (2021) 08 CESTAT CK 0113

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The appellants are in appeals against the impugned orders wherein cenvet credit has been denied to them on the premise as per Notification No.02/14-CE (N.T.) dt.20.1.2014, the appellants were not entitled to avail credit prior to the Notification No.01/10-CE dt.6.2.2010.

2. The facts of the case are that the appellants are located in the State of Jammu & Kashmir and availing the benefit of exemption Notification No.01/10-CE dt.6.2.2010. The appellants procured certain inputs and availed credit of duty paid on these inputs. The case of the Revenue is that during the relevant period i.e. 2011-12 to 2013-14, an assessee is not entitled to avail credit against the inputs issued by the units, who are availing exemption under Notification No.01/10-CE dt.6.2.2010 and after introduction of Notification No.02/14-CE (N.T.) dt.20.1.2014, the notification No.01/10-CE dt.6.2.2010 was amended thereafter the credit was available to the assessee. The matter was adjudicated, the credit availed by the appellants was denied. Against the said orders, the appellants are before me.

3. Ld. Counsel for the appellants submits that the period involved in this case is 01.05.2012 to 19.01.2014 and June 2012 to 19.01.2014 and whereas the show cause notice has been issued on various datesby invoking the extended period of limitation. He also submits that in the case of Dharampal Satyapal Limited vs.

CCE, Noida-2017 (352) ELT 396 (Tri.-All.), the appellants are entitled to take credit on the inputs.

4. On the other hand, Ld.AR reiterated the findings of the Commissioner (Appeals) in the impugned order and submits that in cases of similarly placed assessee where the credit was allowed to them located in the State of Jammu & Kashmir, the appeals have been filed by the Revenue before the Commissioner (Appeals).

5. Heard the parties and considered the submissions.

6. Without going into the merits of the case, I find that similarly placed assessee was allowed the credit although against those orders, the appeals have been filed by the Revenue before the Commissioner (Appeals), in that circumstance, when the Revenue is having divergent views on the issue, the extended period of limitation is not applicable. Admittedly, in this case, the show cause notice has been issued by invoking the extended period of limitation, therefore, I hold that the denial of credit is barred by limitation. Accordingly, the impugned order is set aside and the appeals are allowed with consequential relief, if any.

(Dictated & pronounced in the open Court)