
(2016) 11 CHH CK 0030
In the Chhattisgarh High Court
Case No : Tax Case No. 42 of 2016

Commissioner of C. Ex., Cus. & S.T.

APPELLANT

Vs

Ultra Tech Cement Ltd.

RESPONDENT

Date of Decision : 02-11-2016

Acts Referred:

Citation : (2017) 347 ELT 3

Hon'ble Judges : Deepak Gupta, CJ. and Sanjay Agrawal, J.

Bench : Division Bench

Advocate : Shri Vinay Pandey, Advocate, for the Appellant; Shri Raja Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, C.J.—This appeal is directed against the orders of the Customs, Excise and Service Tax Appellate Tribunal (hereinafter called as "CESTAT") [2016 (332) E.L.T. 356 (Tribunal)] 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 assessee is a manufacturer of Portland Cement and Cement Clinker. It claimed and utilized Cenvat credit for the period March, 2006 to June, 2009 on different projects like wagon loading system, coal washery, clinker hopper, etc. In 2012 itself assessing officer sent a notice to the assessee asking it to furnish documents to show on what basis it was claiming Cenvat credit on the construction items.

3. According to the Revenue, the aforesaid notice was sent to the assessee that the assessee had claimed Cenvat credit on construction items like TMT bars, M.S. beams, channels, angles, flats, MS Pipes and MS Steel, etc., which were not eligible for Cenvat credit as they were not directly related to Cement and Clinker but only to be used for construction of buildings.

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 wilful misstatement; 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 the items which were used on the face of it could not be used for manufacture of Cement and Clinker and the assessee had not suppressed any facts or misstated any facts and therefore, limitation would be one year and not five years. This 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 is 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 misstated 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 the inputs used for setting up the factory in which goods were manufactured. 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.