(2021) 11 CESTAT CK 0076

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 60310 Of 2021

M/s. Jyothy Laboratories — APPELLANT

Vs

Commissioner Of CGST, Jammu — RESPONDENT

Date of Decision : 23-11-2021

Acts Referred:

Citation : (2021) 11 CESTAT CK 0076

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the impugned order wherein credit has been denied to them on the premise as per Notification No.02/14-CE

(N.T.) dt.20.1.2014, the appellant was not entitled to credit prior to the Notification No.01/10-CE dt.6.2.2010.

2. The facts of the case are that the appellant is located in the State of Jammu & Kashmir and availing the benefit of exemption Notification

No.01/10-CE dt.6.2.2010. The appellant 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. 1.10.2012 to 19.1.2014, 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

appellant was denied. Against the said order, the appellant is before me.

3. Ld. Counsel for the appellant submits that the period involved in this case is

1.10.2012 to 19.1.2014 whereas the show cause notice has been issued

on 2.11.2017 by 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 appellant is 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 appeal is allowed with

consequential relief, if any.

(dictated &Pronounced in the open Court)