(2021) 03 CESTAT CK 0104

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 60156 Of 2020

Vishal Industries APPELLANT

Vs

Commissioner Of CE And ST, J And K RESPONDENT

Date of Decision : 10-03-2021

Acts Referred:
Cenvat credit Rules, 2004 — Rule 12

Citation : (2021) 03 CESTAT CK 0104

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Advocate : Durgesh Nadkarni, Swati Chopra

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the impugned order demanding recovery of Cenvat credit availed on inputs and capital goods on the ground that although the appellants were located in the state of Jammu & Kashmir working under Notification No. 1/2010-CE dated 06.02.2010 but in terms of Notification No. 2/2014-CE dated 20.01.2018 they are not entitled to Cenvat credit on inputs/ Capital goods during the period 01.05.2012 till 19.01.2014.

2. The facts of the case are that the appellant is located in the state of Jammu & Kashmir and operating under Notification 56/02-CE dated 14.11.2002. They stated they started commercial activity with effect from 11.09.2008, the appellant availed Cenvat credit on input and capital goods which is permissible under Notification No. 56/02- CE dated 14.11.2002. As such Notification No. 01/10-CE dated 06.02.2010 was incorporated in Rule 12 of Cenvat Credit Rules 2004. Further the Notification No. 02/2014-CE dated 20.01.2014 was also introduced. The said Notification having retrospective effect, hence, the credit availed by the appellant is not available to the appellant during the period of 01.05.2012 to 19.01.2014 in terms of the Notification No. 02/2014-CE dated 20.01.2014, therefore a show cause notice was issued to the appellant on 24.04.2017 by invoking the extended period of limitation. The matter was

adjudicated and Cenvat credit was denied. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that the show cause notice has been issued by invoking the extended period of limitation and on the similar facts this Tribunal has decided the issue in the case of Ms. Pioneer Pesticides Pvt. Ltd. vide final order No. 60001/2021 dated 12.01.2021 hold that in such circumstances the extended period of limitation is not invokable, therefore, impugned order is to be set aside.

4. On the other hand, the Ld. AR argued on the merits and submits that the extended period is invokable as the availment of Cenvat credit came in the knowledge of the department during the course of audit only otherwise which could not be revealed that appellant has taken Cenvat credit during the impugned period.

5. Heard the parties and considered the submissions.

6. As the issue has been settled in the matter extended period of limitation is not invokable in the case of Pioneer Pesticides Pvt. Ltd (Supra), therefore, without going into the merits of the case, I allow the appeal on holding that extended period of limitation is not invokable as held by this Tribunal in the case of Pioneer Pesticides Pvt. Ltd. (Supra) as under:-

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 circumstances, 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.

7. In view of this, the impugned order is set aside and appeal is allowed with consequential relief if any.

(Dictated and pronounced in the open court)

