

Suppression of facts cannot be alleged when the trading activities in form of Balance Sheet are declared

The Hon'ble Karnataka High Court in ***Commissioner of Central Tax v. ABB Limited [Central Excise Appeal No.16/2021 dated June 01, 2022]*** affirmed the order passed by the CESTAT, Bangalore holding that the assessee is not liable to reverse the CENVAT credit availed, on the grounds of absence of suppression of facts. Held that, balance sheet is conclusive evidence in itself to infer trading activities of an assessee and allegations levelled for suppression of facts are not tenable when the same was already available with the Revenue Department.

Facts:

M/s. ABB Limited ("**the Respondent**") is engaged in the manufacturing and clearance of turbo chargers, electric motor, transformer etc. For the purpose of payment of service tax on the services rendered and on the import of services, the Respondent had obtained Service Tax Registration.

Based on intelligence report, a Show Cause Notice ("**SCN**") was issued on April 23, 2010 to the Respondent alleging that apart from manufacturing, the Respondent was also engaged in trading of electrical goods and had wrongly utilized CENVAT credit in relation to the trading activity. Subsequently, Order in Original dated April 30, 2011 ("**OIO**") was passed by the Chief Commissioner of Customs ("**the Appellant**") extending the limitation period, holding that, CENVAT credit availed by the Respondent inadmissible. Further directions were issued for appropriation in the CENVAT account paid under protest.

On appeal, Hon'ble CESTAT Bangalore passed an order ("**the Impugned Order**") in favour of the Respondent holding that there was no suppression of facts on the part of the Respondent with an intention to evade payment of tax and the Respondent was not liable to reverse the

CENVAT Credit. Further, the Appellant was well aware of the trading activities being undertaken by the Respondent was factually incorrect and was subject to interpretation of law.

Being aggrieved by the Impugned Order, the Appellant had filed this appeal.

The Respondent contended that the SCN issued was on the basis of the balance sheet, wherein, all activities of the Respondent were factually declared. Therefore, there was no suppression of material facts. Further, reliance was placed on judgment of the Hon'ble Madras High Court ***Asstt. Commr. of GST & C. Ex., Chennai v. Shriram Value Services Pvt. Ltd (2019 (368) E.L.T. 928 (Mad.)*** wherein, it was held that, when an assessee has acted in good faith, invoking extended period of limitation is not tenable.

Issue:

Whether the Balance Sheet is conclusive evidence for determining trading activities of the Respondent?

Held:

The Hon'ble Karnataka High Court in ***Central Excise Appeal No.16/2021 dated June 01, 2022*** held as under:

- Noted that, SCN was issued on the basis of balance sheet and the trading activities of the Respondent was mentioned on the balance sheet.
- Opined that, the bona fide belief could not be inferred as an ulterior purpose for evading the Duty and therefore, the extended period of limitation was not invocable.
- Affirmed the judgment of CESTAT, Bangalore.
- Held that, the alleged suppression of facts on the part of the Respondent are not tenable, when the same was in the knowledge of the Appellant in the form of balance sheet

wherein, all activities of the Respondent were declared, which was available with the Appellant for inferring the trading activities of the Respondent.

(Author can be reached at info@a2ztaxcorp.com)

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader's personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.