
(2014) 08 AHC CK 0114

Allahabad High Court

Case No: Central Excise Appeal No. 13 of 2014

Commissioner of Central Excise

APPELLANT

Vs

Avadh Transformer (P.) Ltd.

RESPONDENT

Date of Decision: Aug. 21, 2014

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 11A

Citation: (2015) 318 ELT 224 : (2014) 48 GST 67

Hon'ble Judges: Dr. Dhananjaya Yeshwant Chandrachud, J; Devendra Kumar Upadhyaya, J

Bench: Division Bench

Advocate: Rajesh Singh Chauhan, Advocate for the Appellant

Judgement

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1. The appeal by the revenue arises from an order of the Customs, Excise and Services Tax Appellate Tribunal, dated 6 February, 2014. The revenue has formulated the following question of law:

"Whether allowing of Modvat Credit by the Customs, Excise & Service Tax Appellate Tribunal on inputs which were used in repairing of old transformers and which did not suffer any Central Excise Duty is correct as per Cenvat Credit Rules, 2004."

In the present case, the Tribunal dismissed the appeal filed by the revenue and confirmed the order of the Commissioner (Appeals) by holding that the extended period of limitation under Section 11A of the Central Excise Act, 1944 was not attracted. A show-cause notice was issued to the assessee on 3 May, 2005 invoking the extended period of limitation for the recovery of the balance amount of CENVAT credit which had been utilised by the assessee on the use of transformer oil. The pure finding of fact is that the matter had been taken up for audit in 2002. The

show-cause notice which was issued on 3 May, 2005 was clearly barred by limitation when the relevant facts were to the knowledge of the Department, as stated in the order of the Tribunal. That apart, the Tribunal noted that in the grounds of appeal, the findings of the Commissioner (Appeals) have not been displaced. We have extracted in the earlier part of this judgment the question of law as framed by the revenue. Even in the present appeal, the revenue has not framed a proper question of law, since the only issue which arose was in regard to the applicability of the extended period of limitation. Be that as it may, we see no reason to interfere in the order of the Tribunal.

2. The question of law as framed will not arise. The appeal is, accordingly, dismissed. There shall be no order as to costs.