

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

**SERVICE TAX APPEAL NO. 574 of 2012-DB**

(Arising out of OIA-258-2012-STC-SKS-COMMR-A-AHD dated 30.10.2012 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

**DEEP INDUSTRIES LIMITED**

**.....Appellant**

6TH FLOOR, ASTRON TOWER, OPP. FUN REPUBLIC CINEMA,  
S G HIGHWAY, AHMEDABAD-GUJARAT

*VERSUS*

**C.S.T.-SERVICE TAX - AHMEDABAD**

**....Respondent**

7 th Floor, Central Excise Bhawan, Nr. Polytechnic  
CENTRAL EXCISE BHAVAN, AMBAWADI,  
AHMEDABAD, GUJARAT-380015

**APPEARANCE:**

Shri. Punit Prajapati, Chartered Accountant for the Appellant  
Shri. V.G. Iyengar, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)  
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

**Final Order No. A/ 10859 /2023**

DATE OF HEARING: 16.12.2022

DATE OF DECISION: 11.04.2023

**RAMESH NAIR**

The appeal is directed against Order-in-Appeal No. 258/2012(STC)/SKS/Commr.(A)/Ahddtd. 30.12.2012 passed by the Commissioner (Appeals) of Central Excise, Ahmedabad.

2. The appellant, M/s. Deep Industries Ltd., are registered with service tax department. They are also availing Cenvat Credit on input services and Capital Goods under Cenvat Credit Rules, 2004. Appellant had received different capital goods on which duty of excise was paid amounting to Rs. 46,94,384/-. As per the Rule 4(2)(a) of Cenvat Credit Rules 2004 they are eligible for credit of 50% during the year 2009-10. However, appellant had taken 100% credit on capital goods in the year 2009-10 itself. As per department since appellant have erroneously taken 50%

cenvat credit of Rs. 23,47,192/- in the year 2009-10 instead of taking in the year, 2010-11, the appellant was liable for payment of interest on such cenvat credit wrongly taken. Therefore a Show Cause Notice dtd. 21.12.2010 was issued for recovery of interest amounting to Rs. 84,460/- and for imposition of penalty under Rule 15 of Cenvat Credit Rules 2004 read with Section 78 of the Finance Act, 1994. The Adjudicating authority vide Order-In-Original(OIO)dtd. 23.12.2011 dropped the demand of interest for the reasons that the appellant did not utilize the erroneously taken cenvat credit in year 2009-10. Aggrieved with the order-in-original department filed appeal with Commissioner (Appeals), who vide impugned order -in-appeal dtd. 30.12.2012 set aside the OIO and allowed the departmental appeal and held that appellant was liable to pay interest on the cenvat credit erroneously taken. It is against this impugned order-in-appeal the appellant is before us.

3. As regards the demand of interest on CENVAT credit wrongly availed, the learned Chartered Accountant, Shri Punit Prajapati appearing on behalf of the appellant submits that they are not liable to pay interest on the CENVAT credit wrongly availed inasmuch as they have not utilised the amount of CENVAT credit wrongly taken and it was always available in their books of accounts.
4. On other hand the learned Authorized Representative Shri V.G. Iyengar appearing for the revenue strongly refuted the contentions raised by the appellant and submits that CBEC vide circular No. 897/17/2009-CX dtd. 03.09.2009 clarified that the interest shall be recoverable when credit has been wrongly taken,

even if it has not been utilized, in terms of the wording of the Rule 14 of Cenvat Credit Rules, 2004.

5. Heard both sides and perused the records. The limited question needs to be answered in this matter is whether interest on the amount of Cenvat credit availed but not utilized is recoverable or otherwise. The recovery of interest on the inadmissible Cenvat credit has been directed under Rule14 of the Cenvat Credit Rules, 2004 which at the relevant time reads as under :

***"Rule14. Recovery of Cenvat credit wrongly taken or erroneously refunded. — Where the Cenvat credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of Sections 11A and 11AB of the Excise Act or Sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries."***

6. The aforesaid rule has been interpreted by the Hon'ble Supreme Court in the case of *Indo-Swift Laboratories Ltd. 2011(265)ELT 3(S.C.)*. We find that the Hon'ble Supreme Court in the case of *Union of India v. Ind-Swift Laboratories Ltd. (supra)*, has interpreted the unamended Rule14 which was applicable to the appellant during the financial years in question and, has categorically held that a bare reading of such rule would clearly indicate that the manufacturer or the provider of the output service becomes liable to pay interest, along with the dues where Cenvat credit has been taken or utilized wrongly or has been erroneously refunded. The Hon'ble Supreme Court, accordingly, held that if the said Rule14 is read as a whole, the Hon'ble Supreme Court did not find any reason to read the word 'or' in between the expressions 'taken' or 'utilized wrongly' or 'has been erroneously refunded' as the word 'and'. It is held that on the

happening of any of the three circumstances, such credit becomes recoverable along with interest. In our view, the submission of the Learned Counsel for the Appellant that since the Appellant had not utilized the Cenvat credit and thus Rule 14 of the Cenvat Credit Rules was not attracted, is *ex facie* contrary to the principles of law laid down by the Hon'ble Supreme Court in the case of *Union of India v. Ind-Swift Laboratories Ltd.* (supra). We are respectfully bound by the said Judgments.

7. Another issue raised by the Appellant is that subsequent amendment brought to Rule 14 of Cenvat Credit Rules, 2004, the expression "taken or utilized wrongly" has been substituted with "taken and utilized wrongly" be read as clarificatory in nature and hence retrospective in application. We find that this issue has also been considered by the Mumbai Bench of this Tribunal in *Balmer Lawrie & Co. Ltd.* - [2014 \(301\) E.L.T. 573](#) (Tri.-Mum.). After considering in detail, this Tribunal at Para 5.4 observed as follows:

*5.4 As regard the argument advanced by the appellant that since the expression "Cenvat credit taken or utilized wrongly" had been substituted effective from 17-3-2012 with the words "Cenvat credit taken and utilized wrongly," the same would have retrospective effect and, therefore, inasmuch as the appellant has not utilized the credit there will not be any liability to interest, this argument is misplaced. Rule 14 of the Cenvat Credit Rules, 2004 was amended by a Notification No. 18/2012-C.E. (N.T.), dated 17-3-2012 and amendments effected in Rule 14 of the Cenvat Credit Rules, 2004 read [as] follows :-*

*"11. In Rule 14 of the said rules, with effect from the 17th day of March, 2012, -*

*(a) for the words "taken or utilized wrongly", the words "taken and utilized wrongly" shall be substituted;*

*This amendment rule makes it absolute clear that the amendment is with effect from 17-3-2012 and not before. In view of the express provisions in the Amendment Rules, the argument of the appellant that amendment being in the*

*nature of substitution would have retrospective effect cannot be accepted. It is a trite law that every statutory provision is prospective only unless it is explicitly provided that it is retrospective in nature and the legislature provides for such retrospective operation. In the present case, no such retrospectivity has been provided by the legislature in respect of Notification 18/2012-C.E. (N.T.), dated 17-3-2012 and, therefore, the argument of the Counsel in this regard and the decisions relied upon in support of the same cannot be accepted"*

8. In these circumstances, we do not find merit in the contentions raised in the appeal that mere availment of Cenvat credit without its utilisation of the same will not attract interest at appropriate rate under Rule 14 of Cenvat Credit Rules, 2004 as was in force during the relevant time.
9. As regard the imposition of penalty we find that Ld. Commissioner after considering all the facts rightly extended the benefits of waiver of penalty to the appellant, hence we do notnot incline to interfere in the same. However the said waiver of the penalty shall be subject to payment of interest of Rs 84,460/- by the Appellant within 30 days of receipts of this order.
10. The appeal filed by the appellant is thus partially allowed in the above terms.

(Pronounced in the open court on 11.04.2023)

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**