

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10084 of 2019

(Arising out of OIA-VAD-EXCUS-002-APP-347-350-2018-19 dated 14/09/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Gujarat Insecticides Ltd

.....Appellant

`805/806, Gidc, Estate, Ankleshwar,
Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii

.....Respondent

1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

WITH

- i. Excise Appeal No. 10085 of 2019 (Gujarat Insecticides Ltd)**
- ii. Excise Appeal No. 10086 of 2019 (Gujarat Insecticides Ltd)**
- iii. Excise Appeal No. 10087 of 2019 (Gujarat Insecticides Ltd)**

APPEARANCE:

Shri Dhaval Shah, Advocate for the Appellant

Shri Vinod Lukose, Superintendent (Authorised representative) for the Respondent

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

Final Order No. A/ 12344-12347 /2021

DATE OF HEARING: 27.08.2021

DATE OF DECISION:03.09.2021

RAMESH NAIR

The issue involved in the present case is that whether the appellant is liable to pay interest on the Cenvat credit availed on the contribution of service charges collected from employees in respect of Outdoor Catering Services and whether the appellant is liable to penalty.

2. Shri Dhaval Shah, Learned Counsel appearing on behalf of the appellant submits that though the appellant had availed the Cenvat credit under the bonafide belief but the same was not utilized and subsequently

reversed. He submits that as per Rule 14 of Cenvat Credit Rules, 2004 the interest is chargeable when the credit has been taken or utilized or has been erroneously refunded. He submits that though the appellant had taken the credit but it was not wrongly taken. At the time of taking credit it was correctly taken on outdoor Catering Service which is an admissible input service. However, subsequently on the basis of the Judgment in the case of Ultratech Cement Ltd- 2010(20) STR 577 (Bom.) it was settled that the service charges contributed by the employee, Cenvat credit to that extent will not be admissible to the assessee. Therefore, after this judgment only the issue was settled therefore, at the time of taking credit it was correctly taken hence, interest and penalty is not chargeable. He placed reliance on the following judgments:

- GF Toll Road Pvt. Ltd Vs. Commissioner of Central Tax & GST, Thane- 2020(3) TMI 849- CESTAT Mumbai
- Castrol India Ltd Vs. CCE, Raigad- 2015(9) TMI 1335- CESTAT Mumbai
- ITC Ltd Vs Commissioner of GST & CE- 2019 (7) TMI 164- CESTAT Chennai

3. On the other hand Shri Vinod Lukose, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He further submits that the very issue of leviability of interest on Cenvat credit taken has been decided by the Hon'ble Supreme Court in the case of Ind Swift Laboratories Ltd- 2011(265) ELT 3 (SC). Therefore with the judgment of the Apex Court all the judgment cited by the Learned Counsel are distinguishable. He placed reliance on the following judgments:

- Ind Swift Laboratories Ltd – 2011(265) ELT 3 (SC)
- Ultra tech Cement- 2010 920) STR 577 (Bom)
- Wipro Ltd – 2018 (363) ELT 1111 (Tri-LB)
- Atul Ltd -2017 (358) ELT 825 (Tri- Abad)
- Neminath Fabrics – 2010 (265) ELT 369 (Guj)
- Jubilant Agri Consumer Products Ltd – A/13009/2017
- Skf Technologies India P Ltd - A/13452/2017
- KEC International Lyd – A/13857/2017

4. I have carefully considered the submission made by both the sides and perused the record. The limited issue is that in the case where the appellant has availed Cenvat Credit on outdoor Catering Services and admittedly the portion of the service charges was contributed by the employee is not Cenvatable whether the interest and penalty is chargeable. I find that the issue of availment of Cenvat credit on employees' contribution in respect of Outdoor Catering Services was debatable and the issue has been finally settled in the case of Ultra tech Cement Ltd (Supra) by the Hon'ble Bombay High Court. Therefore, in this backdrop of the issue the malafide intention cannot be attributed to the appellant. Therefore, the penalty imposed by the Lower Authority is not sustainable hence, penalty is set aside.

4.1. As regard the levy of interest on availment of Cenvat credit, I find that it has been settled that the credit on Outdoor Catering Service to the extent of contribution of services charges borne by the employee is not Cenvatable. Therefore, the credit taken by the appellant is wrongly taken credit. Therefore, in terms of Rule 14 of CCR, 2004 interest is chargeable. In the Rule it is clearly provided that whether the credit is taken or utilized the interest will be chargeable. In the present case even if the credit was not utilized but taken wrongly therefore, the interest is chargeable from the date of taking credit till the date of reversal, if any made. Both the sides have relied upon the contrary judgments on the issue. However, the Rule 14 has been clearly interpreted by the Hon'ble Supreme Court and held that since there is a word "OR" between credit taken and utilized and came to the conclusion that in both the situation the interest shall be chargeable and the "OR" cannot be read as "AND". In view of this Hon'ble Supreme Court judgment in the case of Ind Swift Laboratories Ltd the issue is settled. This being a judgment given by the highest court of the country, in my

considered view the view taken by the Hon'ble Supreme Court in the said judgment will prevail over the views taken by either high court or tribunal on the same issue. Therefore, the judgment of the Hon'ble Apex Court being binding on all the forums, following the same I hold that the appellant is liable to pay interest.

5. Accordingly, the penalties imposed upon the appellants are set aside and demand of interest is maintained. Appeals are partly allowed in above terms.

(Pronounced in the open court on 03.09.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Geeta