CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 11290 of 2014-DB

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-003-APP-323-13-14 dated 16.12.2013 passed by Commissioner of Central Excise-AHMEDABAD-I]

Hindustan Coca Cola Beverages Ltd .... Appellant
Village : Goblej, Taluka : Matar,
KHEDA, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Ahmedabad-i .... Respondent
C. Ex Bhavan, Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat -380015

APPEARANCE :

Shri Hardik Modh, Advocate for the Appellant
Shri Rajesh R. Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 14.02.2024
DATE OF DECISION: 29.02.2024

FINAL ORDER NO. 10528/2024

C.L. MAHAR :

The brief facts of the matter in this appeal are that M/s. Britco Foods Company Limited (M/s. Britco for short) merged with the appellant under Companies Act, 1956. The scheme of merger was approved by Hon'ble Delhi High Court on 10.09.1999. Before the order of merger, M/s. Britco has made an application dated 20.02.1998 requesting to transfer the unutilized Cenvat credit on inputs to the tune of Rs. 4,26,896/- and on capital goods to the tune of Rs. 4,23,96,092 lying in the balance of their statutory records. After approval of the merger of M/s. Britco into appellant Company, as ordered by Hon'ble Delhi High Court, the appellant on 20.10.1999 had made another application to the Commissioner of Central Excise requesting permission to transfer the unutilized Modvat credit into the appellant's statutory records. As the department has not taken any action regarding transfer of unutilized modvat/Cenvat credit, the appellant filed a writ petition bearing Civil Application No. 8630/2002 in Hon'ble Gujarat High Court whereunder a request was made that transfer of Cenvat credit should be allowed to their statutory accounts and interest should also be paid by the department for delay in this regard. The Hon'ble High Court ordered on 11.09.2002 that the department should take a decision on the appellant's application of transfer of modvat credit/ Cenvat credit, within a period of two weeks. In view of Hon'ble High Court's order, the department vide its letter dated 09.10.2002 informed the appellant that the Commissioner of Central Excise has allowed the transfer of Cenvat credit on inputs to the tune of Rs. 4,08,252/- and rejected the transfer of unutilized Cenvat credit on capital goods saying the M/s. Britco had wrongly taken credit on capital goods at the stage of initial setup of the factory and before commencing of production.

2. Feeling aggrieved with the above letter, the appellant had again filed a Civil Application No. 11367/2002 before the Hon'ble Gujarat High Court. The Hon'ble High Court had issued an interim letter to the department directing to reconsider the issue and issue appropriated speaking order in this regard. The Commissioner on receipt of interim letter from the High Court passed order-in-original No. 4/Commissioner/2003 dated 04.03.2003 whereunder Cenvat credit on capital goods amounting to Rs. 4,23,25,492/- which was lying balance in M/s. Britco's statutory records was allowed to transfer to the appellant's statutory records. However, the learned Commissioner has not given any order as regards the claim of interest as made by them before the Hon'ble High Court regarding delayed permission of allowing transfer of the Cenvat credit. In the mean time, a show cause notice dated 31.01.2005 was served to the applicant asking them to show cause as to why interest of Rs. 2,20,56,050/- claimed by them should not be rejected. The matter was adjudicated by learned Commissioner vide order-in-original 05/Commissioner/2005 dated 11.04.2005 whereunder the claim of interest was rejected on the argument that there is no provision of interest under Central Excise Act and Rules.

3. The appellant feeling aggrieved of the above referred order-in-original again preferred Civil Application No. 15012/2005 in the Hon'ble Gujarat High Court and the Hon'ble High Court vide its order dated 01.04.2013 set-aside the order-in-original No. 05/Commissioner/2005 dated 11.04.2005 and ordered to pay interest. After the Hon'ble Gujarat High Court order dated 01.04.2013, the appellant have again approached the department for sanction of interest amounting to Rs. 3,15,99,509/- on the delayed approval

of transfer of Cenvat credit. The original adjudicating authority vide order-in-original 01/CEX/DC/GAR/Ahmedabad-2013-14 dated 19.06.2013 sanctioned interest amounting to Rs. 1,94,30,455/-. The learned Adjudicating Authority in his order at Para 7 has mentioned the following details:-

> "**7.** The range superintend vide letter dated 14.05.2013 Issued vide F. No.AR-11/Coca- Cola/INT/2013-14 has verified the data and submitted as follows:
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> *"The credit on Input of Rs. 4,08,452/- and credit on capital goods of Rs. 4,23,25,492/- was allowed on 09.10.2002 and 09.04.2003 respectively. The date of application for transfer of credit is 11.02.2000. In view of the fact that the merger was approved by the Hon'ble High Court of Delhi only on 13.08.1999/10.09.1999, with effect from 01.12.1997. The certified copy of the said order was submitted to the department by the said company on 11.02.2000. The application for transfer of Modvat Credit was completed only after receipt of certified copy of order of merger approved by the Hon'ble High Court of Delhi on 11.02.2000. Thereby interest @ 9% for delay in allowing the transfer of credit on Input and capital goods amounting to Rs.1,21,30,988/-*
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> *6% interest per annum on the interest amount from the due date of application i.e., 11.02.2000 up to 15.04.2013 amounting to Rs.72,99,467/-*
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> *As it is learnt that legal section has received certified copy, Hon'ble High Court order dated 02.04.2013 on 15.04.2013, the date of computation of interest is taken up to 15.04.2013, as also requested by the claimant."*

4. The appellant feeling aggrieved of the above order has filed an appeal before Commissioner (Appeals) who vide his impugned order-in-appeal dated 16.12.2013 has rejected the appellant's claim holding as follow:-

> "**5.4** On going through the documents submitted by the appellant along with the appeal memorandum I find the first application made by M/s Britco to the Commissioner of Central Excise on 20.02.1998, but during that time the merger was not approved by the Hon'ble High Court of Delhi. It is therefore, apparent that the appellant filed application in anticipation of the confirmation of approval by the High Court of Delhi. I therefore find that the application filed by the appellant on 20.02.1998 cannot be taken as the relevant date for calculating the interest. I find support from the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Co. Pvt. Ltd. v/s Union of India wherein it was held in Para 26 of the decision that "in this connection it must be remembered that the petition was filed long prior to the decision of the Supreme Court. The petitioners cannot be expected to refer in their petition to the material which would be required in anticipation of the Supreme Court decision" I find that the rationale is applicable to the instant case. Therefore I find that the interest cannot be admissible from 20.02.1998.
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> **5.5** I further find that the appellant applied again for transfer of unutilized Modvat/ Cenvat credit on 20.10.1999 i.e. after the approval of scheme of merger of M/s Britco to the appellant company accorded by the Hon'ble High Court of Delhi. I have gone through the text of the letter and I find that the appellant had not supplied the certified copy of the order issued by the High Court of Delhi. The appellant contended that the department never requested for the certified copy of the order passed by the Hon'ble

High Court of Delhi approving the scheme of merger. I find that it is the obligatory part of the appellant to provide all the relevant documents while applying for the transfer of the unutilized credit. In the instant case the order passed by the Hon'ble High Court of Delhi is the only relevant document which was required to be submitted by the appellant along with the application. I further find that the appellant submitted the copy of order in question only on 11.02 2000. Hence, I find that the views taken by the adjudicating authority in the impugned order are proper. In this regard I rely on the decision of Hon'ble Tribunal in the case of Unimarine Agencies reported in 2004 (175) E.LT. 343 (Tri Chennai) wherein it was held that *"On a careful consideration, we notice that the negligence is patent on record. The appellants were aware of the impugned order and the consequences of not filing the appeal in time. The negligence in not following the appeal in time has been brought forth by their own action. The delay cannot be condoned, as there is no cause shown for condoning the delay by giving explanation for enormous delay of 2,054 days. Therefore, the application is rejected and as a consequence, the appeal is also dismissed"*. In another case of M/s. AEG NGEF LTD. the Hon'ble Tribunal has held that we have gone through the files and notice that the appellants have not produced the Order-in-Original, classification list, literature, technical details and other details required for deciding this appeal. The appellants have also not appeared despite notice. Therefore, the appeal is dismissed under Rule 11 of CEGAT (Procedure) Rules for non-production of documents for deciding the case on merits".

5.6 In view of the above discussion I do not find any reason to interfere in the impugned order and therefore, dismiss the appeal filed by the appellant.**"**

5. We have heard both the sides in detail on the matter. Before proceeding further in this regard it will be relevant to reproduce Hon'ble Gujarat High Court order dated 02.04.2013:-

"7. The learned Advocate for the respondents on the other had relied on the decision of the Hon'ble Apex Court in the matter of Union of India & Ors vs. M/s. Upper danger Sugar & Industries Ltd. (supra) which can be distinguished on facts. It was a case where the issue vas regarding interest on rebate of excess production wherein it was held that in absence of any statutory provision, interest could not have been awarded. The question that whether the assessee was entitled to credit or not wan alee net free from doubt. It was a question which was bona fide agitated and settled by the Tax Tribunal. It was also not a case where the money had been withheld unjustifiably and therefore the claim was denied on equitable consideration as well. The position is quite different in the case on hand, as in this case an amount to which the petitioner was rightfully entitled vas illegally and unlawfully withheld and such retention is found to be unsustainable in law. Thus, the said decision relied upon by the learned counsel for the respondents is found not applicable considering the factual matrix of the present case

8. Under the circumstances, this Court is of the opinion that the order of the Commissioner disentitling the petitioner of any interest on the amount is required to be set aside. The same is accordingly set aside.

9. Learned Advocate for the respondents submitted that the rate of interest is regulated by the different notifications issued by the department from time to time. Accordingly, it is directed that the department will calculate and pay the interest payable for the delayed payment at the rate of 9% per annum within a period of one month from the date of receipt of this judgment and order.

9.1 The department shall also pay 6% simple interest per annum on the interest so quantified as per directions contained in para 9 above. This interest should also be paid within a period of one month from the date of receipt of this judgment and order**."**

It can be seen from the above decision of Hon'ble Gujarat High Court that interest was made payable by the department to the appellant for the delayed payment. The only question which is there before us to decide is what is the period of delay and which date is to be taken as a relevant date merger of M/s. Britco with M/s. Hindustan Coca Cola Beverages Limited. We find that the scheme of arrangement of merger between M/s. Britco Foods Company Limited (M/s. Britco) with M/s. Hindustan Coca Cola Beverages Limited was approved by Hon'ble Delhi High Court vide its order dated 10.09.1999 and this merger order of Hon'ble High Court was conveyed by the appellant to the department vide its order dated 20.10.1999. We are of the opinion that the Modvat/Cenvat credit which was lying in the balance of M/s. Britco stand transferred to M/s. Hindustan Coca Cola Beverages Limited from the date of merger of two entities which was effected vide order dated 10.09.1999. This order was conveyed to the department on 20.10.1999 as per the record of the appellant. We are, therefore, hold that department should have allowed the transfer of Modvat/ Cenvat credit lying in RG23A and RG23C accounts of M/s. Britco Foods Company Limited to M/s. Hindustan Coca Cola Beverages Limited on receipt of letter of merger of two companies. We are also of the opinion that 20.10.1999 is the date when department was informed of the formal merger of two entities and therefore the relevant date of transfer of Cenvat credit should be 20.10.1999.

6. In view of above, we hold that relevant date for allowing interest on delayed transfer of Cenvat credit as ordered by Hon'ble Gujarat High Court in the above mentioned order dated 04.04.2013, will be 20.10.1999.

7. In view of the above discussion, we set-aside the impugned order-in-appeal and allow the appeal making the relevant date for calculation of interest as 20.10.1999.

(Pronounced in the open court on 29.02.2024*)*

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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