# IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## REGIONAL BENCH : ALLAHABAD
## COURT No. I

**APPEAL No. E/1772/2008-EX[DB]**

(Arising out of Order-in-Original No. 06/Commr./MRT-I/2008 dated 25/02/2008 passed by Commissioner of Customs & Central Excise, Meerut-I)

**M/s Modi Rubber Ltd.** **Appellant**

Vs.

**Commissioner of Central Excise, Meerut-I** **Respondent**

Appearance:

Shri Ajay Aggarwal, Advocate &
Ms. Mallika Joshi, Advocate, for Appellant
Shri Mohd. Altaf, Assistant Commissioner (AR), for Respondent

**CORAM:**

**Hon'ble Mr. Anil Choudhary, Member (Judicial)**
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing & Date of Decision : 12/04/2018

FINAL ORDER NO. **71028/2018**

**Per: Anil G. Shakkarwar**

The present appeal is directed against Order-in-Original No. 06/Commr./MRT-I/2008 dated 25/02/2008 passed by Commissioner of Customs & Central Excise, Meerut-I.

2. The brief facts of the case are that the appellants were engaged in the manufacture of Tyres & Tubes. They availed credit of Additional duty of Excise under Section 3 of Additional Duties of Excise (Goods of Special Importance) Act, 1957 paid on Tyre Cord Fabrics prior to 01/03/2003. The appellant availed Cenvat credit of said duty from

16/03/1995. The appellant had defaulted Central Excise duty amounting to Rs.2,18,29,237.50/- for the month of July, 2001. The said defaulted Central Excise duty was paid by debit of the accrued credit of AED (GSI) availed prior to 01/03/2003. Therefore, it appeared to Revenue that the said utilization of credit of AED (GSI) was in contravention of the provisions of Central Excise Act, 1944 and therefore, a Show Cause Notice dated 01/04/2004 was issued to the appellants, wherein the appellants were called upon to show cause as to why outstanding duty of Excise (BED) amounting to Rs.2,18,29,237.50/- deposited by them on 31/03/2003 from the accumulated credit of AED (GSI) be not recovered from them under Rule 12 of Cenvat Credit Rules, 2002 read with Section 11A of the Central Excise Act, 1944 and interest be not charged on the said amount under Rule 12 ibid read with Section 11AB of the Central Excise Act, 1944, from the date when the duty became payable. On contest, the issue was adjudicated through impugned Order-in-Original dated 25/02/2008, wherein the learned Original Authority in Para 5.6 held that credit of AED (GSI) accrued during the period from 01/04/2000 to 31/03/2003 was correctly utilized by the appellant towards the payment of duty of Excise (BED) on 31/03/2003. He, further, held that interest was payable on the amount defaulted by the appellant under Rule 12 & Rule 8 of Central Excise Rules, 2001 & 2002 respectively prevailing at the relevant period read with Section

11AB of the Central Excise Act, 1944 from the date when the duty became payable i.e. 05/08/2001 till it was paid on 31/03/2003. In result, the learned Original Authority directed the appellants to pay interest of Rs.69,11,197/-. Being aggrieved by the said order of the learned Original Authority, appellant is before this Tribunal.

3. Heard the ld. Counsel for the appellant. He has submitted that the Show Cause Notice has invoked provision of Rule 12 of Cenvat Credit Rules, 2002 read with Section 11AB of the Central Excise Act, 1944 for recovery of interest. He has submitted that said Rule 12 read as follows:- "where the Cenvat credit has been taken or utilized wrongly, the same along with interest shall be recovered from the manufacturer and the provisions of Section 11A and 11AB of the Act shall apply *mutatis mutandis* for effecting such recoveries." He has further submitted that the learned Original Authority has held that the Cenvat credit was properly availed and correctly utilized and therefore, there was not case for invocation of either Rule 12 of Cenvat Credit Rules, 2002 or Section 11A of the Central Excise Act, 1944. In result, the provisions of Section 11AB of the Central Excise Act, 1944 will not be operating in absence of any finding attracting Section 11A of the Central Excise Act, 1944. He has further submitted that Hon,ble Supreme Court in the case of Commissioner *Versus* T.V.S. Whirlpool Ltd. reported at 2000 (119) E.L.T. A177 (S.C.) has held that it is reasonable that the

period of limitation that applies to a claim for principle amount should also apply to the claim for interest thereon. He has submitted that normal period for demand of duty in the present case expired on 05/08/2002, whereas Show Cause Notice was issued on 01/04/2004 beyond the normal period of limitation and for that reason also the demand of interest was not sustainable.

4. Heard the ld. A. R. for Revenue. He has submitted that the due duty as on 05/08/2001 was not credited to the exchequer till 31/03/2003 and therefore order to pay interest is legal and proper.

5. Having considered the rival contentions and on perusal of the facts on record, on perusal of Rule 12 of the Cenvat Credit Rules, 2002 and Section 11AB of the Central Excise Act, 1944, we find that Rule 12 provided for recovery of interest only along with recovery of Cenvat credit taken or utilized wrongly, We, further, find that Section 11AB of the Central Excise Act, 1944 is invocable only when Section 11A of the Central Excise Act, 1944 has been invoked. In the present case, we find that the learned Original Authority has held that the credit was properly taken and correctly utilized and therefore, there was no confirmation of demand of duty either under Rule 12 of Cenvat Credit Rules, 2002 nor under Section 11A of the Central Excise Act, 1944. We, therefore, hold that in the absence of any confirmation of demand under Section 11A of the Central Excise Act, 1944 or under Rule 12

of the Cenvat Credit Rules the interest demanded does not sustain. We, therefore, set aside the confirmation of interest of Rs.69,11,197/- and allow the appeal.

(Dictated in Court)

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| **Sd/-** | **Sd/-** |
| **(Anil Choudhary)** | **(Anil G. Shakkarwar)** |
| **Member (Judicial)** | **Member (Technical)** |

*Ansari*