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

APPEAL No. E/1406/2012-EX[DB]

(Arising out of Order-in-Appeal No. 44/CE/MRT-II/2012 dated 24/02/2012 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

Simbhaoli Sugars Ltd. **Appellant**

Vs.

Commissioner, Customs & Central Excise, Meerut-II **Respondent**

Appearance:

Shri Rajesh Chhibber (Advocate) for Appellant
Shri Mohd Altaf (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 05/07/2018
Date of Decision : 05/07/2018

FINAL ORDER NO. **71562 / 2018**

Per: Archana Wadhwa

After hearing both the said duly represented by Shri Rajesh Chhibber, Advocate for the Appellant and Shri Mohd Altaf (Asstt. Commr.) AR for the Revenue, we find that the appellant availed Cenvat Credit in respect of certain capital goods. Such availment was in accordance with law and there is no dispute about the same. However, subsequently they found the said capital goods to be defective and accordingly, written off the same in their books of accounts.

2. On audit of the books of accounts, a view was entertained by the Revenue that appellant has to reverse the Cenvat Credit availed in respect of the same. The appellant accepted the above stand of the Revenue and accordingly, debited the credit so availed by them to the extent of Rs.12.04 lakhs approximately. Inasmuch as the said credit remained only as a paper entry, without utilization, the appellant contested that no interest is liable to be paid by them.

3. After a period of around more than one year, proceedings were initiated against them by way of issuance of a show cause notice proposing to appropriate the already debited amount as also for confirmation of interest and for imposition of penalty. The same stands culminated into impugned order passed by the authority confirming the demand, interest and imposing penalty of identical amount. Hence the present appeal.

4. Learned advocate appearing for the appellant though submits that the proceedings for appropriation of the debited amount were initiated after a period of one year from the relevant date as such one barred by limitation but submits that the appellant have already reversed the credit he is not contesting the confirmation of the same. The only contest in the present appeal is to confirmation of interest and imposition of penalty.

5. After hearing both the sides we find that the undisputedly the credit availed by them remained a paper entry and same was not utilized till the date of reversal. The Hon'ble Karnataka High Court in the case of Commissioner of Central Excise & Service Tax, LTU, Bangalore vs. Bill Forge Pvt. Ltd. reported at 2012 (279) E.L.T. 209 (Kar.) has held that in such a scenario, no interest liability would arise against the assessee where the wrongfully taken credit stand reversed without utilization. The said decision stands followed in a number of judgments. As such we find no justification in confirmation of interest.

6. As regards penalty, we note that the law was amended somewhere in 2007 requiring an assessee to reverse the credit in respect of "written off goods". Prior to the said amendment in law, there were many decisions laying down that there was no such requirements to debit the already availed credit. As the period is around the period of amendment, we are of the view that there could be a bona fide belief on the part of the assessee not to reverse the credit. Otherwise also we find that the said credit availed by them was not being utilized, thus leading credence to the appellant's believe that there was no mala fide as they were having sufficient credit balance in their records. Further as soon as the same was pointed out by the audit, the appellant reversed the credit. All these factors lead

us to believe in the bona fide of the assessee. Accordingly, the penalty imposed upon them is set aside.

7. In a nutshell the demand is confirmed but penalty and interest are set aside. Appeal is disposed of in above terms.

(Dictated and pronounced in Court)

Sd/-
Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ankit