

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

**APPEAL No.E/3377/2010-EX[DB]**

(Arising out of Order-in-Appeal No. 204-CE/APPL/NOIDA/2010 dated 21/07/2010 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

**M/s CNH Industrial India Pvt. Ltd.**

**Appellant**

Vs.

**Commissioner of Customs, C.E. & S.T., Noida**

**Respondent**

Appearance:

Shri B.L. Narasimhan & Shri Hrishikesh Jha, Advocates  
Shri Gyandendra Kr. Tripathi, Asstt Commissioner (AR),

for Appellant  
for Respondent

**CORAM:**

**Hon'ble Shri Ashok Jindal, Member (Judicial)**  
**Hon'ble Shri Anil G. Shakkwar, Member (Technical)**

Date of Hearing : 28/12/2018  
Date of Decision : 28/12/2018

FINAL ORDER NO- **70048 / 2019**

**Per: Ashok Jindal**

The appellant is in appeal against the impugned order wherein interest on delayed refund has been rejected by the authorities bellow.

2. The brief facts of the case are that the appellants are manufacturer of 'Tractors'. Vide Notification No.23/2004-CE dated 09.07.2004 the tractors became exempt from payment

of duty. Therefore, the appellants were asked to reverse Cenvat credit on the inputs laying in stock work in progress.

3. The appellant paid the Cenvat credit under protest through PLA on 14.12.2004, 16.12.2004, 27.12.2004 and 31<sup>st</sup> December, 2004 to the tune of Rs.2,27,91,920/-. Thereafter, show cause notice dated 08.08.2005 was issued for reversal of the Cenvat credit which was not admissible to the appellant subsequent to Notification No.23/2004-CE on 09.07.2004, but it was segregated the Cenvat credit came to be reversed. Against the same order, appellant preferred appeal before this Tribunal. The Tribunal vide its Final Order No.198-201/2009 dated 24.02.2009 hold that the appellant was not required to reverse Cenvat credit in pursuant to Notification No.23/2004-CE on 09.07.2004. Thereafter, appellant filed refund claim of amount into claim paid in 2007 under protest but the refund of interest of delayed payment was not given to the appellant. Against the said order, appellants are before us.

4. Learned Counsel for appellant submits that the amount was paid under protest which was not duty payable by them. Therefore, provisions of Section 11BB of the act are not applicable. In the light of the decision of Hon'ble Madras High Court in the case of Commissioner of Central Excise, Chennai-II Vs UCAL Fuel Systems Ltd. 2014 (306) ELT 26 (Mad.).

5. On the other hand learned A.R. appearing on behalf of revenue submits that the learned Commissioner (Appeals) has rightly denied the interest and appellant is entitled to claim interest after a period of 3 months ----- utilized and the same has been pointed by the learned Commissioner (Appeals) in the impugned order. Therefore, appeal filed by appellant is required to dismiss.

6. Heard the parties considered the submissions. On considering the submissions and arguments advanced before us we find that in this case in pursuance to Notification No.23/2004-CE dated 09.07.2004 the tractors manufactured by the appellant became exempt from payment of duty. Therefore, appellant was directed to reverse the Cenvat credit through PLA for input laying in stock, work in progress and contained finished goods. Admittedly, at the time of availment of Cenvat credit the tractors are dutiable. Therefore, they were entitled to take Cenvat credit of inputs and capital goods. In that circumstances, it was directed to the appellant, do forcefully and the same was paid by the appellant under protest. The amount so deposited, not duty and the same has been decided by this Tribunal vide Final Order dated 30.04.2009, if amount paid under protest which is held to be not a duty. In that circumstances, in the light of the decision of Hon'ble Madras High Court in the case of Central Excise, Chennai-II Vs UCAL Fuel Systems Ltd. (supra) the assessee is

entitled to claim the interest from the date deposit to its realization. Therefore, we hold that appellants are entitled to pay interest from the date of payment of deposit, as mentioned in para no.2 of this order hereinabove, till its realization.

6. In these terms, appeal is allowed.

(Dictated in Court)

**(Anil G. Shakkarwar)**  
**Member (Technical)**

**(Ashok Jindal)**  
**Member (Judicial)**

*akp*