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

APPEAL No. E/70062/2016-EX[SM]

(Arising out of Order-in-Original No. 16/PR. COMMR./MRT/2015 dated 13/10/2015 passed by Commissioner of Customs, Central Excise &Service Tax, Meerut)

M/s Continental India Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut **Respondent**

Appearance:

Shri Suyash Agarwal, Advocate, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 22/03/2019

FINAL ORDER NO. **70689/2019**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Shri Suyash Agarwal, ld. Advocate appearing on behalf of the appellant & Shri Sandeep Kumar Singh, ld. Deputy Commissioner appearing on behalf of the Revenue, I note that the appellant is manufacturer of Giant Tyre & Flaps falling under Chapter 40 of the First Schedule to the Central Excise Tariff Act, 1985. They were also availing facility of Cenvat Credit on inputs, inputs services and capital goods. Through show cause notice dated 16/10/2014, proceedings were initiated against the appellant for denial of Cenvat Credit of

Rs.1.31 crore which included two components, one was around Rs.1.13 crore and the other was around Rs.17 lakhs. It was stated in the show cause notice that as the Cenvat Credit of Rs.1.31 crore has already been deposited by the appellant, why the same should not be appropriated. On adjudication ld. Original Authority has appropriated the entire amount of Rs.1.31 crore, which was deposited before the issuance of show cause notice and further held that there was no interest involved in the proceedings, therefore proceedings for demand of interest were also dropped in respect of Rs.1.13 crore of credit. The Original Authority has directed to recover the interest on disallowed Cenvat Credit of Rs.17 lakh and imposed equal penalty of Rs.17 lakh under Rule 15 of the Cenvat Credit Rules, 2004. The appellant is aggrieved by imposition of penalty of Rs.17 lakh. Ld. Counsel for the appellant has submitted that the said credit of around Rs.17 lakh was not utilized by them on the day on which said amount was debited and therefore neither interest nor penalty is imposable on the appellant. He has relied on the decision of this Tribunal in the case of Commissioner of Central Excise, Raipur *Versus* Sharda Energy & Minerals Ltd. reported at 2013 (291) ELT 404 (Tri. – Delhi).

2. Having considered the rival submissions and on perusal of the facts on record, I note that the said Rs.17 lakh credit was debited before the issuance of show cause notice and

therefore it is established that Rs.17 lakhs credit was not utilized by the appellant. Had they utilized the credit of Rs.17 lakh, they were required to pay the same through cash. Therefore, it is established that said Rs.17 lakh credit was not utilized by the appellant and was available in the balance. I note from the earlier decision of this Tribunal in the above stated case that this Tribunal has held that - if Cenvat Credit is reversed without being utilized neither penalty nor interest is imposable on the appellant. The said decision of this Tribunal was based on ruling by Hon'ble Karnataka High Court in the case of Commissioner of Central Excise & Service Tax. LTU, Bangalore *Versus* Bill Forge Pvt. Ltd. reported at 2012 (279) ELT 209 (Karnataka). I find that the decision of this Tribunal in the said case is squarely applicable in the present case. I, therefore, set aside that part of the Order-in-Original through which interest was directed to be paid at Rs.17 lakh of Cenvat Credit and equal amount of penalty was imposed on the appellant. In above terms, appeal is allowed.

(Dictated in Court)

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

Ansari