

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38, M.G. Marg, CIVIL LINES, ALLAHABAD

Dated: 29/2/2016

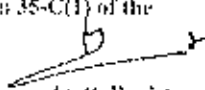
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70088/2016 DB dated 23/02/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.


Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	E/2243/2006DB	THE SIMBHOLI SUGAR MILLS LTD P.O- SIMBHOLI DISTT-GHAZIABAD(UP)245207
		COMMISSIONER OF CENTRAL EXCISE, MEERUT B OPP SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s) SH RAJESH CHIBBER, ADV
FA-9, KAVI NAGAR
GHAZIABAD(UP)

4 Bar Association, CESTAT, ALLAHABAD

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmana Allied Service Pvt. Ltd., 59/32, New Rohitak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

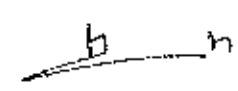
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 106, Everest Block, Aditya Enclave, Hyderabad - 38

13 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad - 500082

14 C.D.R. 15 Office Copy 16 Guard File


Asstt. Registrar
Regional Bench, Allahabad

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

Ex. Appeal No.2243/06

Arising out of O/O No.74-CE/MRT-II/2006 dated 13.04.2006 passed
by Commr. of Central Excise & Customs, Meerut II.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK KUMAR ARYA, MEMBER (TECHNICAL)

1. Whether Press Reporters may be allowed to see
the Order for publication as per Rule 27 of the
CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the
CESTAT (Procedure) Rules, 1982 for publication
in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy
of the Order? : Seen
4. Whether Order is to be circulated to the Departmental
Authorities? : Yes

M/s The Simbhaoli Sugar Mills Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Meerut II

RESPONDENT (S)

APPEARANCE

Shri Rajesh Chibber, Advocate for the Appellant (s)
Shri D. K. Deb, Asstt. Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ASHOK KUMAR ARYA, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 23.02.2016

Final ORDER NO. 70080/2016

[Handwritten Signature]



Per Mr. Ashok Kumar Arya :

Both the parties have been heard in detail.

2. The issue involved herein is the recovery of interest for the Cenvat credit wrongly taken, but not utilized. The Revenue issued SCN for recovery of interest of Rs.59,895/- for wrongly taken cenvat credit, which was not utilized by the Appellant, M/s The Simbhaoli Sugar Mills Ltd.

3. The appellant represented by the Id.Advocate, Mr. Rajesh Chibber, mainly argues that there has been an amendment in Rule 14 of Cenvat Credit Rules, 2004, whereby the wordings "Cenvat credit **taken or utilized** wrongly" were replaced by "Cenvat credit **taken and utilized**", saying that when they did not utilize the Cenvat credit liability of interest cannot be fixed against them.

3.1 The appellant also cites following case laws in support of their stand :

(i) *Commr. of Central Excise, Allahabad : Balrampur Chinni Mills Ltd. : 2014 (300) ELT 449 (Tri.-Del.) ;*

(ii) *GTL Infrastructure Ltd. Vs. Commr. of Service Tax, Mumbai : 2015 (37) STR 577 (Tri.-Mumbai) ;*

(iii) *Commr. of Central Excise, Madurai Vs. Strategic Engineering (P) Ltd. : 2014 (310) ELT 509 (Mad.) ;*



(iv) *Nova Petrochemicals Ltd. Vs. Commr. of Central Excise, Ahmedabad II* : 2015 (330) ELT 648 (Tri.-Ahmd.) ;

(v) *Commr. of Central Excise & S. Tax, Bangalore Vs. Bill Forge Pvt. Ltd.* : 2012 (26) STR 204 (Kar.) ;

(vi) *Gurmehar Construction Vs. Commr. of Central Excise, Raipur* : 2014 (36) STR 545 (Tri.-Del.).

3.2 The appellant also argues that in their own case, CESTAT, New Delhi issued Final Order No.A/52327/2015-EX (DB) dt. 20th July, 2015 (M/s Simbhaoli Sugar Mills Ltd. Vs. CCEx.,Meerut II), wherein it was held that the appellant was not liable to pay interest on wrongly taken Cenvat credit, when later it was reversed.

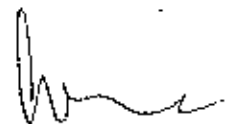
4. The Revenue represented by Id.A.R., Shri D.K.Deb, vehemently argues that there is a liability of interest on the appellant namely, M/s The Simbhaoli Sugar Mills Ltd., even when they have not utilized wrongly taken Cenvat credit. In support, he cites the case law in the case of *Bharat Heavy Electricals Ltd. Vs. Commr. of Customs & Central Excise, Hyderabad I* : 2014 (303) ELT 139 (Tri.-Bang.). He also argues that the amendment made in the year 2012 to Rule 14 of Cenvat Credit Rules, made effective from 01.04.2012, which is not retrospective amendment and it cannot be



made effective retrospectively unless it is clearly brought out in the amendment itself and which is not the case here.

5. We have carefully considered the facts on record as well as the submissions made by both the sides. The appellant is a manufacturer of sugar and had taken wrong Cenvat credit of Rs.4 lakhs (approx.) on various goods, which were later on found not entitled to the said Cenvat credit. When it was pointed out so by Audit, the appellant immediately reversed the wrongly taken Cenvat credit. It has been found that there was no malafide intention in this regard on the part of the appellant. The liability of interest for which SCN was issued is about Rs.59,895/- only.

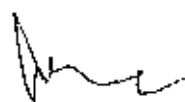
5.1 The main issue here is, where the appellant has taken wrong Cenvat credit by mistake, as they were not knowing that the goods in question for which they had taken Cenvat credit was not entitled to Cenvat credit, whether there would be liability on the assessee for payment of interest for the period when the said cenvat amounts were lying unutilized in their account. There is no dispute on record that the appellant never utilized the said Cenvat credit for payment of any duty or otherwise. The appellant has cited case laws in their favour given above; we find that



the Revenue has also cited the case law given earlier in its support.

5.1.1 It is on record that the Hon'ble Supreme Court in the case of *Union of India Vs. Indo-Swift Laboratories Ltd.* : 2011 (265) ELT 3 (S.C.), held that liability of interest would lie, even in case where cenvat credit was wrongly taken though not utilized. We find that in case of *Indo-Swift Laboratories Ltd.*, the facts are that the assessee had taken Cenvat credit based on fake invoices and did not reverse the said Cenvat credit; and the recovery could be made only by way of issue of demand of duty. Here, in the present case, the facts of *Indo-Swift Laboratories Ltd.* case are distinguishable as after mere pointing out by the Audit, the assessee reversed the Cenvat credit, which had been wrongly taken. We find that in case of *M/s GTL Infrastructure Ltd.* (cited supra), this position has been made more clear. The said decision, inter-alia, says as below :

"12.....The case in hand although the appellant has taken the Cenvat Credit, the same has been reversed on pointing out therefore the facts of this case are similar to the case of *Bill Forge Pvt. Ltd.* (supra) and distinguishable from the facts of the case of *Ind-*



Swift Laboratories Ltd. (supra), as in the case of *Ind-Swift Laboratories Ltd.* (supra), the Cenvat Credit was taken by the assessee on the strength of fake invoice and credit was not reversed by them but it was recovered by way of demanding duty. Therefore, the said facts are not applicable to the facts in hand. (emphasis supplied). In these terms, we hold that the appellants are not liable to pay interest for wrongful availment of Cenvat Credit which has been reversed before utilization by the appellant in light of the decision of the Hon'ble High Court in the case of *Bill Forge P. Ltd.* (supra) which has been followed by co-ordinate bench in *CCE, Raipur v. M/s. Sharda Energy and Minerals Ltd.* - 2013 (291) E.L.T. 404 (Tri. - Delhi) and in *Commissioner of C. Ex. Allahabad v. Balrampur Chini Mills Ltd.* - 2014 (300) E.L.T. 449 (Tri. - Delhi)."

5.1.2 The Hon'ble Karnataka High Court also in the case of *M/s Bill Forge Pvt. Ltd.* (cited supra) has distinguished the case of *M/s Ind-Swift Laboratories* (cited supra) and has held that mere wrong availment of Cenvat credit does not attract interest liability. The Karnataka High Court in this case, inter-alia, has observed as under :

"20. From the aforesaid discussion what emerges is that the credit of excise duty in the register maintained for the said purpose is only a book entry. It might be utilised later for payment of



excise duty on the excisable product. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. It matures when the excisable product is received from the factory and the stage for payment of excise duty is reached. Actually, the credit is taken, at the time of the removal of the excisable product. It is in the nature of a set off or an adjustment. The assessee uses the credit to make payment of excise duty on excisable product. Instead of paying excise duty, the cenvat credit is utilized, thereby it is adjusted or set off against the duty payable and a debit entry is made in the register. Therefore, this is a procedure whereby the manufacturers can utilise the credit to make payment of duty to discharge his liability. Before utilization of such credit, the entry has been reversed, it amounts to not taking credit. Reversal of cenvat credit amounts to non-taking of credit on the inputs (emphasis supplied).

21. Interest is compensatory in character, and is imposed on an assessee, who has withheld payment of any tax, as and when it is due and payable. The levy of interest is on the actual amount which is withheld and the extent of delay in paying tax on the due date. If there is no liability to pay tax, there is no liability to pay interest. Section 11AB of the Act is attracted only on delayed payment of duty i.e., where only duty

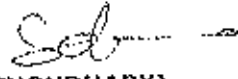


of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person liable to pay duty, shall in addition to the duty is liable to pay interest. Section do not stipulate interest is payable from the date of book entry, showing entitlement of Cenvat credit. Interest cannot be claimed from the date of wrong availment of CENVAT credit and that the interest would be payable from the date CENVAT credit is taken or utilized wrongly."

6. Considering the above discussions and analysis, it is held that there is no liability on the appellant assessee to pay interest; consequently, the appeal is allowed.

(Dictated and pronounced in the open Court)


(ASHOK K. ARYA)
MEMBER (TECHNICAL)


(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
b 15-2-16
सहायक पंजीकरण / Asstt. Registrar
सिमाशुल्क, उत्पादशुल्क एवं सेवा कर
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38, M. G. MARG, ALLAHABAD-211001

