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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 27/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71621-71622/2017-SM[BR] dated 06/10/2017

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 |
|---|---|---|
| 1 | E/70760/2016 | **Honda Siel Power Products Ltd**<br>Plot No.-5,sector 41,greater Noida ,dadri<br>GAUTAM BUDH NAGAR<br>UP<br>203207 |
| 2 | E/70829/2016 | **COMMISSIONER OF CUSTOMS CENTRAL EXCISE & SERVICE TAX-Noida Ii**<br>OFFICE OF THE COMMISSIONER CENTRAL EXCISE<br>HOTEL FORMULE 1,<br>WEGMANS BUSINESS PARK,<br>KP-III, GREATER NOIDA<br>GOTAM BUDH NAGAR<br>U.P. |
| | | Name and Address of Respondent |
| 3 | | C.C. & C.E. & S.T.-Noida<br>C-56/42...SECTOR 62,<br>NOIDA,<br>UTTAR PRADESH-201307 |
| 4 | | Honda Siel Power Products Ltd<br>Plot No.-5,sector-41,,<br>GREATER NOIDA<br>,UP |

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

**V. Lakshmi Kumaran, ALD**
**3/1A/3 OPP AUTO**
**SALES,Above the Office Of**
**Blue Dart/DHL Courier,**
**COLVIN ROAD, LOHIA**
**MARG ALLAHABAD-211001**

6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

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

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

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

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

APPEAL Nos.E/70760 & 70829/2016-EX[SM]

(Arising out of Order-in-Appeal No. 01-02/COMMISSIONER/NOIDA II/2016-17 dated 28/04/2016 passed by Commissioner of Central Excise, Noida-II)

**M/s Honda Siel Power Products Ltd.** (In E/70760/2016)

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

(In E/70829/2016) **Appellants**

Vs.

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

**M/s Honda Siel Power Products Ltd.** **Respondents**

Appearance:

Ms Natasha Sarkar, Advocate — for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), — for Respondent

**CORAM:**

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

Date of Hearing : 06/10/2017
Date of Decision : 06/10/2017

FINAL ORDER NO-71621-71622/2017

**Per: Anil Choudhary**

These cross appeals have been preferred both by the Assessee and the Revenue against the common impugned Order-in-Original No. 01-02/COMMISSIONER/NOIDA II/2016-17 dated 28/04/2016 passed by the Commissioner of Customs and Central Excise, Noida–II.

2. A show cause notice dated 20/04/2015 was issued on the following three issues:-

(i). The appellant have availed Cenvat credit on Capital Goods- Electric Generating Set Amounting to Rs.23,18,988/- (Rs.11,59,949/- during the month of May'12 and balance 50% in subsequent financial year) of duty paid under protest, on the strength of supplementary invoice No.2 dated 23/11/2011 issued by the supplier- M/s Quippo Energy Pvt. Ltd. in respect of the goods removed earlier on 24th May, 2011 without payment of duty and without having registered themselves with the Department.

(ii). During the course of audit, it was observed that the assessee was engaged also in trading activity of items such as Lawn Mover, Tillers etc. since 01/04/2011. The trading activity had been specified as exempted services in the service tax law. The audit party observed that assessee is availing Cenvat credit of common input services such as advertising, security and business exhibition etc. in respect of which no separate account is maintained. On being pointed out the assessee paid an amount of Rs.10,36,382/-, attributable to such exempted services (Rs.4,95,397/- for the period 2011-12 & Rs.5,40,985 for 2012-13) as provided under Rule 6(3) of

Cenvat Credit Rules, 2004. The said reversal was done by service tax debit entry No.709 & 710 both dated 5th September, 2013 but the interest on the said amount had not been paid till the date of SCN.

(iii) The next issue was in respect of inadmissible Cenvat credit amounting to Rs.35,12,170/- availed on services received by assessee in relation to export, which was proposed to be recovered under Rule 14 of CCR, 2004.

3. It is informed by the parties that the issue of Cenvat credit of Rs.35,12,170/- stands settled and both the parties are not in appeal on this point.

4. So far the issue of Rs.10,36,382/- relating to non-reversal of proportionate Cenvat credit on account of exempted services in common. The learned counsel for the assessee urges that it is admitted fact in the SCN that the said credit was reversed more than 18 months prior to issue of the SCN, then the SCN on this ground is bad. So far the claim of interest on the said amount reversed, the learned counsel states that it was urged before the learned Commissioner that the assessee had sufficient balance of Cenvat credit, all along, which was more than the amount they have reversed. As such there being no usage of the credit by them, no liability for

interest arises. Moreover, in view of the amendment in Rule 14 of CCR, 2004 wherein the words "taken or utilized wrongly" the words "taken and utilized wrongly" have been substituted vide Notification No.18/2012-CE(NT) dated 17.03.2012. The learned counsel also relies on the ruling of Hon'ble Karnataka High Court in the case of Commissioner of Central Excise Vs Bill Forge Pvt. Ltd. reported at 2012 (26) STR 204 (Kar.) wherein the Hon'ble High Court have held as under:-

"**22.** In the instant case, the facts are not in dispute. The assessee had availed wrongly the Cenvat credit on capital goods. Before the credit was taken or utilized, the mistake was brought to its notice. The assessee accepted the mistake and immediately reversed the entry. Thus the assessee did not take the benefit of the wrong entry in the account books. As he had taken credit in a sum of Rs. 11,691-00, a sum of Rs. 154-00 was the interest payable from the date the duty was payable, which they promptly paid. The claim of the Revenue was, though the assessee has not taken or utilized this Cenvat credit, because they admitted the mistake, the assessee is liable to pay interest from the date the entry was made in the register showing the availment of credit. According to the Revenue, once tax is paid on input or input service or service rendered and a corresponding entry is made in the account books of the assessee, it amounts to taking the benefit of Cenvat credit. Therefore interest is payable from that date, though, in fact by such entry the Revenue is not put to any loss at all. When once the wrong entry was pointed out, being convinced, the assessee has promptly reversed the entry. In other words, he did not take the advantage of wrong entry. He did not take the Cenvat credit or utilized the Cenvat Credit. It is in those circumstances the Tribunal was justified in holding that when the assessee has not taken the benefit of the Cenvat credit, there is no liability to pay interest. Before it can be taken, it had been reversed. In other words, once the entry was reversed, it is as if that the Cenvat credit was not available. Therefore, the said judgment of the Apex Court has no application to the facts of this case. It is only when the assessee had taken the credit, in other words by taking such credit, if he had not paid the duty which is

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legally due to the Government, the Government would have sustained loss to that extent. Then the liability to pay interest from the date the amount became due arises under Section 11AB, in order to compensate the Government which was deprived of the duty on the date it became due. Without the liability to pay duty, the liability to pay interest would not arise. The liability to pay interest would arise only when the duty is not paid on the due date. If duty is not payable, the liability to pay interest would not arise."

5. Now the remaining issue in this appeal is regarding dispute, as regards Cenvat credit on capital goods purchased from M/s Quippo Energy Pvt. Ltd. The learned Commissioner in the impugned order have observed as follows: –

"5.3.9 The party at the time of personal hearing has submitted that the Hon'ble Tribunal in the Final Order dated 15/10/2015 reported in 2016 (331) E.L.T. 617 (Tri.-Ahmd.), has set aside the charges of suppression in Para- 17 and 19 of the decision and consequently dropped the demand beyond the normal period of limitation and set aside the imposition of penalty. And also no Show Cause Notice has been issued to M/s Quippo for the period in dispute as the main invoice is dated 24/05/2011. Therefore, once there is no charge of suppression against the supplier, denial of credit in the light of Rule 9(1) (b) is not sustainable.

5.3.10 I find that there is nothing no record to show that for the period in question any demand alleging non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Central Excise Act or the rules made there under with intent to evade payment of duty has been issued. Further, I find that the charge of suppression for the earlier period has also been dropped by the Hon'ble Tribunal in the Final Order dated 15/10/2015.

5.3.11 In view of the above, I find that the impugned credit on the basis of Supplementary Invoice is not hit by the exclusion provided in the Rule 9(1) (b) of the Cenvat Credit Rules.

5.3.12 As per Rule 3 of the Cenvat Credit Rules a manufacturer of final products or a provider of taxable service is allowed to take credit of the duty paid on any input or capital goods received in the factory of manufacturer of the final products or provider of output service. Further, Rule 4 of the Cenvat Credit Rules provides that the Cenvat credit in respect of capital goods received in a factory shall be taken only for an amount not exceeding fifty percent of the duty paid on such capital goods in the same Financial Year and the balance amount of credit may be taken in the subsequent Financial Year.

5.3.13 It is not in dispute that said goods have been received in the factory. It is also not in dispute that the duty has been paid on the said goods. Further, the party has also not violated the conditions of Rule 4 of the Cenvat Credit Rules. Accordingly, I hold that Cenvat credit on the basis of Supplementary Invoice No. 002 dated 23/12/2011 was admissible to the party under the Cenvat Credit Rules."

Accordingly, the learned counsel for the assessee prays for allowing the appeal and dismissing the appeal of the revenue.

6. The learned A.R. for revenue in support of the revenue appeal states that against the judgement of this Tribunal (Ahmadabad Bench) in the case of M/s QEPL being Final Order dated 15th October 2015 reported at 2016 (331) ELT 617 (Tri.-Ahmd.), the revenue preferred appeal before Hon'ble Gujarat High Court and as such the matter have not attained finality. Accordingly, it is urged that reliance by the learned Commissioner on the order of the Tribunal was not desirable. Accordingly, it is

prayed to allow the appeal on this issue. Further, it is urged that interest is chargeable on the amount subsequently reversed and accordingly, interest may be allowed.

7. Having considered the rival contentions, I find that it has not been disputed that the appellant had sufficient balance in their Cenvat register, which amount was subsequently reversed, on being objected by the audit. Further it has been provided by way of amendment vide Notification No.18/2012-CE (NT) dated 17/03/2012 that no interest is chargeable upon subsequent reversal of the credit, if the assessee is able to demonstrate that they had not utilized the credit. The period of dispute in the present appeals is 2011-12 and 2012-13. Accordingly, I hold that under the provisions of the amended Rule 14 of CCR, 2014 the same shall have retrospective effect and under the admitted fact that they have not applied the credit. I hold that they are not liable to pay interest.

8. So far the other issue of Cenvat credit on Electric Generating Set Amounting to Rs.23,18,988/- is concerned, I find that the issue stands settled by Ahmadabad Bench of this Tribunal, as mentioned hereinabove. It is further admitted fact that there is no stay granted by the Hon'ble Gujarat High Court against

the order of the Tribunal. In this view of the matter, I find no merits in the appeal of the revenue.

9. Accordingly, the Appeal No.E/70760/2016 filed by the assessee is allowed and the Appeal No.E/70829/2016 filed by the revenue is dismissed. Accordingly, penalties imposed vide the impugned order is set aside. The assessee shall be entitled to consequential benefits, in accordance with law.

(Dictated in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

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प्रमाणित प्रति/Certified True Copy
15/12/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण(C.E.S.T.A.T.)
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