CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

E/40/2009-DB

[Arising out of Order-in-Appeal No. 32/2008 dated 20/10/2008 passed by Commissioner of Central Excise & Service Tax (Appeals), LTU, Bangalore]

M/S VOLVO INDIA (P) LTD
YELACHAHALLI, TAVAREKERE, KOSKOTE TALUKE, BANGALORE

Appellant(s)

VERSUS

Commissioner of Central Excise,Customs and Service Tax BANGALORE-LTU
100 FT RING ROAD JSS TOWERS,
BANASHANKARI-III STAGE,
BANGALORE, - 560085
KARNATAKA

Respondent(s)

Appearance:

Mr. Ravi Raghavan & Ms. Sudeeshna, Advocates
LAKSHMI KUMARAN & SRIDHARAN
WORLD TRADE CENTRE NO.404-406, 4TH FLOOR, SOUTH WING BRIGADE GATEWAY CAMPUS NO.26/1, DR. RAJKUMAR ROAD, BANGALORE - 560 055
KARNATAKA

For the Appellant

Mr. Madhup sharan, asst. Commissioner, AR

For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20437 / 2019

Date of Hearing: 17/05/2019

Date of Decision: 17/05/2019

Per : P. ANJANI KUMAR

M/s Volvo India Pvt. Ltd., the appellants, are engaged in re-packing and selling of automobiles parts from central warehouse as well as service centres located all over the country Re-packing and re-labeling of automobiles parts as amounted to manufacture in terms of Section 2(f)(iii) of Central Excise Act, 1944 w.e.f 01.06.2006 for the period June 2006 to April 2007 the appellants have paid duty along with interest. The appellants contended that they had a credit on the goods lying in stock as on 01.06.2006 and they are eligible to pay the applicable duty through CENVAT also. Therefore, they have ended up paying more interest and accordingly filed a refund claim of Rs.62,36,018/- which was rejected by Order-in-Original No.24-R/2008-09 dated 27.06.2008 by Commissioner (Appeals).

2. Learned Counsel for the appellants submitted that interest is payable on the balance portion of the duty and not on the entire duty as held in the following cases:

- *CCE, Cochin v. Fact Ltd. – 2017 (355) ELT 55 (Ker.).*
- *CCE, Puducherry v. CESTAT, Chennai – 2017 (346) ELT 80 (Mad.).*
- *Vikash J.Shah v. Commissioner (Appeals), Coimbatore – 2016 (334) ELT 491 (Mad.).*

2.1. He submits that what is relevant for interest is duty not paid and not the entire duty which is paid which includes the CENVAT credit available to them. Therefore, he submits that interest is payable on differential duty paid in cash over and above the available credit.

3. On the other hand, learned Authorized Representative has reiterated the findings of OIO and OIA and submitted that the availability of CENVAT credit to the appellants is in dispute and this Bench vide Final Order No.21159-21164/2018 dated 16.08.2018 has remanded the case back to the original authority for re-quantification of the quantum of CENVAT credit. This Bench has also issued a Miscellaneous Order on the application for ROM made by the appellants vide M.O. No.20155-20160/2019 dated 29.03.2019. The learned Authorized Representative further submitted that since the availability of CENVAT itself is in question and the appellant’s contention is

that interest is payable on the net amount of CENVAT credit cannot be entertained.

4. Heard both the parties and perused the records.

5. After considering the submissions of both the parties and perusal of the material on record, we find that the appellants have submitted that they have paid interest of Rs.74,61,293/- and are entitled for refund of Rs.62,36,018/- as there was huge stock of materials lying in stock as on 01.06.2006 the credit on which is available to them therefore the duty paid by them in cash should only be reckoned for the purpose of calculating interest as this is the duty which is actually not paid. Further, we find that the Hon'ble High Court of Kerala in the case of Commissioner *of C.Ex., S.T. & Cus., Cochin v. Fact Ltd. [2017 (355) ELT 55 (Ker.)]* has observed in Para 5 as follows:

> *"5.When this appeal came up before us for consideration today, learned counsel appearing on both sides submitted that the issue raised is covered against the respondent and in favour of the appellant by the decision of the Apex Court in [(2009) 9 SCC 101 = 2009 (240) E.L.T. 661 (S.C.)] wherein it was held that Cenvat credit for duty paid on inputs used in the manufacture of exempted final products is not allowed. In the light of the binding decision of the Apex Court, it was conceded that this appeal will have to be necessarily allowed, and Annexure A4 and A6 orders set aside. Learned counsel appearing for the respondent however submitted, relying on the decision of the Division Bench of this Court in W.A. No. 1922 of 2011, that if during the relevant period namely from March, 2000 to November, 2012 utilisable Cenvat credit was available, the assessee may not be liable to pay interest on the amount demanded in Annexure A3 order passed by the original authority. Learned counsel submitted that even assuming that the entire demand cannot be satisfied by setting it off or adjusting it against utilizable Cenvat credit, the liability to pay interest has to be confined to the short fall if any available in the input credit. Learned counsel submitted that in the light of the binding decision of the Division of this Court, the matter may be remanded to the original authority for the purpose of determining the question whether the utilizable input credit was available. Learned counsel for the appellant did not oppose the said request. A Division Bench of this Court has in W.A. No. 1922 of 2011 held that though liability to pay interest on default is automatic, the question whether utilizable input credit was available during the whole period of default to offset the entire demand has to be gone into by the original authority. The Division Bench also held that if the entire demand*

cannot be met, interest need be paid only on the differential amount. In the light of the binding decision of this Court, we are of the opinion that notwithstanding the fact that the appellant is entitled to succeed and Annexure A4 and A6 orders passed by the appellate authority and the Tribunal are liable to be set aside, the matter should go back to the original authority for the limited purpose of deciding the question whether utilizable input credit was available during the period from March, 2000 to November, 2002. Needless to say, if after such enquiry it is found that the input credit was available, the respondent will not be liable to pay interest for the reason that it is only a question of belated adjustment of duty credit of the input credit available. If on the other hand after such enquiry it is found that there is short fall or deficit in the input credit available, the respondent will necessarily be liable to pay interest for the period of default."

5.1. In view of the above, we find that the interest is payable on the differential amount only. However, in this case, the availability of credit is in dispute and this Bench has directed the lower authorities to allow credit after verifying the record, available with the appellants or the Department, pertaining to receipt (imports), storage and distribution of parts to various service centres within three months of receipt of the order. In view of the Miscellaneous Order, we find that the claim of interest by the appellant is pre-mature. First, the amount of credit available to the appellant needs to be arrived at by the authorities and thereafter, the net amount payable as on the date of payment of the duty by the appellants i.e. 04.05.2007 requires to be arrived at. We hold that the differential amount alone shall be reckoned for the purpose of payment of interest.

6. In view of the above observations, we allow the appeal by way of remand to the jurisdictional authorities.

(Operative portion of the Order was pronounced
in Open Court on **17/05/2019**)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

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