

**Customs, Excise & Service Tax Appellate Tribunal**  
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

~~~~~

Appeal No. E/60506/2018

(Arising out of OIA-APPL-CE-PKL-231-232-2017 dated 22.01.2018 passed by the Commissioner (Appeals) of Central Excise-ROHTAK)

Shiv Energy Pvt Ltd. : Appellant (s)

Vs

CCE & ST- Rohtak : Respondent (s)

**Represented by:**

For Appellant (s) : Shri Mukesh Gupta, CA

For Respondent (s): Shri V. Gupta, AR

**CORAM :**

**Mr. Ashok Jindal, Hon'ble Member (Judicial)**

Date of Hearing/Decision: 13.12.2018

**ORDER No. A/63591 / 2018**

**Per : Mr. Ashok Jindal**

By way of impugned order, the interest and penalty has been demanded from the appellant.

2. The facts of the case are that during the course of Audit, it was pointed out to the appellant that they have availed cenvat credit on capital goods as well as also claimed depreciation under Income Tax Act, 1961 on the capital goods. As per the Cenvat Credit Rules, if the assessee is claiming depreciation of capital goods before the income tax authorities, the assessee is not entitled to claim cenvat credit on capital goods. On pointing out by the Audit, immediately the appellant reversed the cenvat credit availed. Later on, a show cause notice was issued to demand of interest and to impose penalty on the appellant without any appropriation of the cenvat credit amount reversed by the appellant. The matter was adjudicated, the demand of interest and penalty was confirmed. Against the said order, the appellant is before me.

3. Heard the parties.
4. Considering the fact that in the case of ***Punjab National Bank vs. CCE & ST- Chandigarh vide Final Order No. 60094/2017 dated 17.01.2017*** and the issue came before this Tribunal that without any appropriation of demand, interest cannot be demanded and penalty cannot be imposed and this Tribunal after going through the facts of that case, it is observed as under:-

“7. In the case of Total Security System (Supra), the same issue came up before this Tribunal wherein the assessee did not pay service tax in time which was paid later on, thereafter, the show cause notice was issued to the assessee to demand interest and to impose penalty under Section 76 of the Act.

8. In those set of facts observed as under:

2. I find that neither show cause notice nor the order of the adjudicating authority and lower appellate authority have confirmed any amount as service tax payable by the appellants. The notice and the order of the lower appellate authority relate only to interest and penalty, without confirming any service tax demand against the appellants. Since this is not legally sustainable, for want of confirmation of service tax demand, I set aside the impugned order and allow the appeal with consequential relief if any due to the appellants in accordance with law.”

As in this case also there is no appropriation of the demand on account of denial of cenvat credit, in that circumstances, the demand of interest and penalty imposed on the appellant are not sustainable. Therefore, the impugned order is set-aside and the appeal is allowed with consequential relief, if any.

*(Dictated & pronounced in the Court)*

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