IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/385 & 386/2012

(Arising out of Order-in-Appeal 25 & 26/2012 dated 16.04.2012 passed by the Commissioner of Central Excise & Service Tax (Appeals), LTU, Chennai).

CCE &ST, LTU, Chennai : Appellants

Vs.

M/s. Ford India Pvt. Ltd. : Respondent

Appearance

Shri K.P. Muralidharan, Ac (AR)
for the Appellant

Shri Raghavan Ramabhadran, Advocate
for the Respondents.

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **02.07.2018**

FINAL ORDER No. **____________/2018**

Per Madhu Mohan Damodhar

Both these appeals since relating to the same issue are disposed of by this common order.

2. The common facts are that M/s. Ford India Pt. Ltd., the respondents herein are the manufacturers of passenger cars.

They had procured inputs from 100% EOU and had availed Cenvat credit on the whole of excise duty mentioned in the relevant invoices, instead of restricted credit as per the formula prescribed under Rule 3 (7) (A) of the Cenvat Credit Rules, 2004 (CCR). SCNs dated 06.10.2009 were issued to them interalia, proposing recovery of such alleged wrongly availed credit amounts of Rs. 40,79,810/- and 11,34,402/- respectively with interest thereon and also imposition of penalties under various provisions of law. After due process of law, vide adjudication order Nos. 10 & 11/2011-ADC dated 10.01.2011 the original authority reduced the amounts of Rs. 37,32,386/- and Rs.10,59,007/- respectively with interest and also imposed equal quantum of penalties under Rule 15 (2) of CCR read with section 11 AC of CEA,1944. In appeal, the Commissioner (Appeals) vide impugned orders 25 & 26/2012 dated 16.04.2012 confirmed the demand on merits but set aside the interest and the penalties imposed by the original authority. Revenue is aggrieved by these orders and are before the Tribunal.

3. Today when the matter came up for hearing, on behalf of the Revenue, Ld. AR, Shri K.P. Muralidharan, AC takes us to para-6.0 of the impugned order to point out that when the credit that was not eligible was availed by the respondents, even when subsequently reversed, interest liability has to be discharged on the same. The LD. AR further submits that even as per the present respondent's own submissions before the Commissioner (Appeals), they had less credit than the quantum demanded for the months of January and February, 2009. The Ld. AR further contends that for

the same reasons, the penalties imposed by the original authority are very much in order and should not have been set aside by the Commissioner (Appeals).

4. On the other hand, for the respondents, the Ld. Advocate Shri Raghavan Ramabhadran made oral and written submissions, which are broadly summarized as under:-

i) The respondents had availed the excess credit only because of inadvertent mistake and without any malafide intention. There was also interpretational confusions due to the apparent mis-match between the provisions of CCR that were prevailing during the period of dispute under which there was no power to avail the alleged excess credit; however the Notification No. 23/03 has brought out an amendment which had the effect to restrict the quantum of Cenvat credit availment in such cases.

ii) In any case, the respondents had paid up the bulk of the disputed credit amount after the issue of SCN and the remaining quantum thereby was also reversed pursuant to the OIA.

iii) The respondents have not filed any appeal in respect of the impugned order. It is however argued that the order of the Commissioner (Appeals) setting aside the interest and penalty is very much in order.

iv) During the entire period of dispute, except for the months of January and February 2009, the respondents always had more credit balance than the corresponding disputed excess credit amounts for that period. Hence, there cannot be any demand of interest and penalty.

v) At the most, the respondents may have difficulty in respect of the months of January and February 2009 when balance of Cenvat credit available was less than the disputed excess Cenvat credit pertaining to that period.

vi) Ld. Advocate relies upon a number of case laws, in particular, *CCE Vs. Pals Microsystems Ltd.* - 2011 (270) ELT 305 (SC), *CCE Vs. Bill Forge Pvt. Ltd.* - 2012 (279) ELT 209 (Kar.) and *Strategic Engineering Vs. CC*E - 2014 (310) ELT 509 (Mad.) in support of his contentions.

5. Heard both sides and have gone through the records.

6.1 The combined take away from the ratios of the judgments of the Hon'ble Apex court in Pals Microsystems Ltd. (supra), of the Hon'ble High Court of Karnataka in Bill Forge Pvt. Ltd. (supra) and of the Hon'ble High Court of Madras in Strategic Engineering (supra), relied upon by the Ld. Advocate, is that in cases where wrong Cenvat credit taken inadvertently, if reversed subsequently, and the balance Cenvat credit on the date of reversal is more than the disputed quantum of credit, there cannot be any demand for interest on the assessee and also no imposition of penalty either.

6.2 Going by this combined ratio, we find that the lower appellate authority has been correct in adopting this principle to set aside demand of interest and penalty, when these ingredients are present. However, by the same ratio, during the months of January and February 2009, when the credit balances of the respondent were much lower than the quantum of excess Cenvat credit, taken erroneously, the lower appellate authority should have upheld demands to the extent of short fall between the proportionate excess credits availed and the actual credit balance amount available. To this extent, and for these two periods, we hold that the respondent will have to discharge interest liability. Only for this purpose, the matter is remanded to the original authority for reworking of the quantum of interest required to be paid by the respondent on the basis arrived at as above. However, there shall not be any imposition of penalty in respect of the interest liability so arrived at. So ordered.

6.3 Appeals of the department on this score are therefore partly allowed by way of remand.

6.4 However, we do not find any infirmity in setting aside of the penalties by the lower appellate authority. Appeals of the department on this score are therefore rejected.

6.5 No interference is however made with the demands of recovery of wrongly availed credit amounts of Rs.37,32,386/- and Rs. 10,59,007/-, upheld in the impugned order.

7. Appeals of the department are therefore partly allowed by way of remand and partly rejected.

(Order dictated and pronounced in the open Court)

(P.DINESHA)
MEMBER (JUDICIAL)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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