CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH COURT NO.II

EXCISE APPEAL NO. 51009 OF 2020

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-24-20-21 dated 22.07.2020 passed by the Commissioner of Central Excise (Appeals), Indore]

MAHLE ENGINE COMPONENTS INDIA PVT LTD **APPELLANT**
Pithampur, Dhar

Vs.

COMMISSIONER, CENTRAL EXCISE **RESPONDENT**
-INDORE

Appearance:
Shri D K Tyagi, Advocate for the Appellant
Shri Sanjay Kumar Singh, Authorised Representative for the Respondent

CORAM:
HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI C. L. MAHAR, MEMBER(TECHNICAL)

DATE OF HEARING : March 31, 2023

DATE OF DECISION : March 31, 2023

<u>Final Order No. 50504 /2023</u>

<u>PER ASHOK JINDAL</u>

The appellant is in appeal against the impugned order demanding the interest of excess Cenvat Credit taken by the respondents during the period 1.04.2009 which was reversed on 18.01.2009.

2. The facts of case are that the appellant procured capital goods during the year 2007-2008 and availed 50% of Cenvat credit on the duty paid on the capital goods. The capital goods were sold by the appellant on payment of duty. But the appellant inadvertently taken the balance 5090 of cenvat credit on 01.04.2009. On pointing out by the Audit, the appellant on 18.11.2009 reversed the Cenvat credit. As the

appellant was having sufficient balance in their Cenvat credit account during the intervening period, the appellant did not pay interest on the excess Cenvat credit was by them. Thereafter on 16.1.2014, a show cause notice came to be issued to the appellant for demanding interest for the intervening period i.e. 1.9.2011 to 18.11.09 for taking excess Cenvat credit. The said show cause notice was adjudicated. The demand was confirmed. Against the said order, the appellant is before us.

3. Learned counsel for the appellant submits that during the intervening period, the appellant was having sufficient balance in their Cenvat credit account, therefore, they are not liable to pay interest as held by the Hon’ble Karnataka High Court in the case of **Bill Forge Ltd.** reported in [**2012 (279) ELT 209**]. He also submitted that same view was taken by the Hon'ble High Court of Allahabad in the case of **Rana Sugar Ltd.** reported in **[2010 (253) ELT 366**] which has been affirmed by Hon'ble Supreme Court reported in **[2018 (361) ELT A-83]** that if Cenvat credit has been reversed which was taken wrongly and during the intervening period there was sufficient balance in Cenvat credit account, no interest is payable. He also submitted that the show-cause notice is barred by limitation as the Audit took place in 2009 and the show cause notice was issued in 2014.

4. On the other hand, learned authorised representative opposed the contention of the learned counsel and heavily relied on the decision of **Ind-Swift Laboratories Ltd. vs Union Of India** reported in **(2009 (240) ELT 328 (P&H))** wherein it has been held that for the intervening period the appellant is required to pay interest.

5. Heard the parties. Considered the submissions.

6. We find that considering the decision of **Ind-Swift Laboratories Ltd.** (supra), the Hon'ble Karnataka High court came to the conclusion that if Cenvat credit has been taken wrongly and same has been reversed and during the intervening period, the assessee is maintaining sufficient balance in their Cenvat credit account, the interest is not payable. The said view has been affirmed by the Hon'ble Apex court in **Rana Sugar Ltd.** (supra).

7. In the circumstances, we hold that the appellant is not liable to pay interest for the intervening period as demanded in the impugned order. Therefore, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open Court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

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