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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/2166/2007 – SM[BR] Date 09/10/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S YAMUNA ISPAT (P) LTD.
COURT ROAD, OPP. LIC OFFICE, JAGADHRI

M/S YAMUNA ISPAT (P) LTD. Appellant
Vs
C.C.E. PANCHKULA Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1207 / 2009 –SM[BR] dated 8.9.2009

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. PANCHKULA
   SCO NO. 407 AND 408, SECTOR 8, PANCHKULA (HARYANA) 134119.
2. Adv. / Consult
   MR.AALOK ARORA,ADV
   82-MISSION COMPOUND,SAHARANPUR (U.P.)

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
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(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

E/2166/07

Appeal No.E/2166/07-SM

[Arising out of Order-in-Appeal No.266/SSS/PCK/2007 dated 18.4.2007 passed by Commissioner (Appeals), Gurgaon (Haryana)].

Date of Hearing:08.09.2009
Date of decision: 08.09.2009

M/s. Yamuna Ispat (P) Ltd. ...Appellant

Vs.

CCE, Panchkula ... Respondent

Present for the Appellant :Shri.Alok Arora, Advocate
Present for the Respondent:ShriS. Gautam, DR

Coram: Hon'ble Mr. Rakesh Kumar, Technical Member

Final **ORDER NO.** 1207/2009 SM(BR) **DATED:08.09.2009**

PER: RAKESH KUMAR

The facts giving rise to this appeal are as under:-

2. A show cause notice was issued to the appellant on 26.12.1994 asking them to show cause as to why irregular credit taken by them amounting to Rs.5,07,738/- during July, August and September 1994 under Certain invoices should not be recovered. The cenvat demand was confirmed on 19.5.97. However the amount was paid by the appellant only in the year 2004 during the month of April and May 2004. The amount was paid partly by utilizing the cenvat credit which was available and the balance amount of Rs.2,91,305/- was paid in cash. It is at this stage that the deptt. demanded interest on this amount under the provision of

section 11AA. In this regard the jurisdictional Superintendent vide letter dated 28.12.05 which had been preceded by long correspondence, directed the appellant to pay the interest under section 11AA on the entire amount of Rs.5,07,738, which had become due from the date of expiry of 3 months from the date of the adjudication order confirming the cenvat credit demand. The appellant filed an appeal to Commissioner (Appeals) against the order dated 28.12.05 and commissioner (Appeals) vide in impugned Order-in- Appeal dated 18.4.07 dismissed the appeal and upheld the interest demand. It is against this order that the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Alok Arora, Advocate, the ld. Counsel for the appellant made the following submissions.

(1) No demand for interest under section 11AA had been made in the show cause notice and the same had not been demanded in the adjudication order.

(2) Section11AA was not in existence at the time of issue of show cause notice and hence the same cannot be invoked in the year 2004 for demanding interest on the Cenvat Credit demand which was confirmed under rule 57 I. The demand was under rule 57I and the same had been confirmed under rule 57 I and hence, the provisions of section 11AA are not applicable. In this regard he relied upon Hon'ble Supreme Court judgment in the case of ... reported in 2000 (118) ELT 11SC, wherein, in para 17, it was held that the provisions of section 11A of the Central Excise Act 1944 have no application to any action taken under rule 57I prior to its

amendment on 16.10.1998 and that rule 57 I is not in any manner subject to section 11A

(3) The Tribunal in the case of Moraya Global Pvt. Ltd vs. CCE, Mumbai reported in 2004 (176) ELT 272 (Tri- Mumbai) has held that the interest under the provisions of section 11AA of Central Excise Act is for duty and not for Modvat credit and the provisions of section 11AA are not applicable for Modvat Credit.

(4) The Cenvat credit demand in this case pertains to July, August and September 1994 while section 11AA had been introduced w.e.f. 26.5.95. Tribunal in the case of Komal Straw Board & Mill Board Inds. Vs. CCE, Ludhiana reported in 2005 (186) ELT 584 (Tri. Del.) has held that interest under section 11AA of Central Excise Act, 1944 cannot be charged in respect of demands pertaining to the period when such provisions were not there in the status book.

(5) The appellant had unutilized credit amounting to about Rs.2,17,789/- in their Modvat account since 1995 and since their unit was closed and this credit was unutilized at the time of payment of cenvat credit demand amount of Rs.2,17,789/- was paid through cenvat credit and only the balance amount of Rs.2,91,305/- was paid in cash. The interest should be charged only on the amount which was paid in cash and it should not be charged on the amount which was paid through cenvat credit as the amount paid through Cenvat credit was available for payment scheme 1995. In fact, earlier Range Supdt. as per his interest calculation communicated vide letter dated 20th Jan., 2005 had informed the appellant that interest would be chargeable only on the amount paid in cash

2.2 Shri S.Gautan, the ld. DR reiterating the Commissioner (appeals) finding in the impugned order in appeal, pleaded that in view of first proviso to section 11AA, it is applicable even in respect of duty demands confirmed prior to introduction of this section in the Central Excise Act w.e.f. 26.05.95, that when the section 11AA had been introduced in 1995, the rule 57I had also been amended so as to make the provisions of section 11AA applicable to cenvat credit demands, that the Adjudication Order confirming the cenvat credit demand had been issued after this amendment and therefore the interest on the amount which was not paid within a period of 3 months from the date of the adjudication order, had been correctly demanded.

3. I have carefully considered the submissions from both the sides and perused the records. The cenvat demand pertains to July-September 1994 period and the same had been confirmed on 19.05.97 but the amount was paid only in April and May, 2004. The point of dispute is as to whether the interest under section 11AA would be chargeable on this amount or not and if it is chargeable, whether it would be chargeable on the entire amount or only on the amount paid in cash.

4. Section 11AA providing for charging of interest at notified rate on the duty confirmed under section 11A (2), but which was not paid, had been introduced in the Central Excise Act 1944 w.e.f. 26.05.95 and it provided that if the duty demand confirmed under section 11A(2) is not paid within a period of 3 months from the date of confirmation of the demand, interest at the notified rate will be payable. First proviso to section 11AA provides that where a person chargeable with duty determined under section 11A(2) before the date on which the Finance Bill 1995 receives the assent of the

President, fails to pay such duty within three months from such date, then, such person shall be liable to pay interest under this section, for the period from the date immediately after three months from such date, till the date of payment of such duty. Thus the provisions of section 11AA are applicable to the duty demands confirmed during the period prior to 26.05.95, which had remained unpaid and in such cases the interest liability would start from 26.08.95. Immediately after introduction of section 11AA in the Central Excise Act 1994 w.e.f. 26.5.95, the rule 57I regarding recovery of wrongly taken Modvat Credit was also amended and sub-rule (3) of rule 57 I introduced w.e.f. 31.5.95 which provided that where a manufacturer or an assessee fails to pay the amount determined under sub-rule (1) or sub rule (2) within 3 months from the date of receipt of demand confirmation order, he shall pay in addition to the amount so determined, interest at such rate as may be fixed by the board under section 11AA of the Act, from the date immediately after expiry of a period of 3 months, till the date of payment . Thus this provision was in force at the time when the duty demand was confirmed vide Order-in-Original dated 19.05.97. Therefore, the provisions of Rule 57I (3) are applicable to this ~~duty~~ demand and since this amount was not paid within a period of 3 months, the interest liability will start from the date on which 3 months from the date of passing of the adjudication order expired. In view of this, I do not accept the appellant's plea that the provisions of section 11AA are not applicable to Modvat Credit demand. The Hon'ble Supreme Court's order cited by the ld. Counsel for the appellant is not applicable to the facts of this case.

5. As regards the appellant's plea that the interest would be chargeable only on the part of the demand which was paid in cash

and not on the demand which was paid to cenvat credit, I do not find any merit in this plea, as there is no such provision in section11AA or in rule 57 I (3). Interest is chargeable on the amount of confirmed Modvat Credit which was not paid and since the entire demand remained unpaid till the same was paid in April and May, 2004, the interest would be chargeable on the entire amount. In view of this, I do not find any infirmity in the impugned order. The appeal is dismissed.

[Dictated & Pronounced in the open Court].

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita