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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/300 /2009 – SM[BR] Date 15/12/2010

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

To :
M/S BHARAT HEAVY ELECTRICALS LTD.
DY.GM (FINANCE)/TAXATION DIVN., BLOCK VI,
ANNEX WWGF, P.O.PIPLANI, BHOPAL-462023.

M/S BHARAT HEAVY ELECTRICALS LTD. Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1421 / 2010-SM[BR] dated 29.11.2010 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 BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
   MR.Z. U. ALVI
   D-8,BDA COLONY, ADJACENT GARUDA TRAVELS. KOH-E-FIZA BHOPAL-01
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 300 of 2009-SM(BR)

[Arising out of Order-in-Original No. 27/Commr/CEX/2008 dated 6.11.2008 passed by the Commissioner of Customs & Central Excise, Bhopal]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Bharat Heavy Electricals Ltd. — Appellants

Vs.

Commissioner of Central Excise
Bhopal — Respondent

Appearance:

Shri Z.U. Alvi, Advocate for the Appellants
Shri Rajendra Gupta, SDR for the Respondent

Date of Hearing/decision : 29.11.2010

Final **ORAL ORDER NO. 1421/2010 SM (BR)**

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner No. 27/Commr/CEX/2008 dated 6.11.08 by which he confirmed the demand of interest of Rs.5,50,045/- on the ground that the appellants have wrongly availed Cenvat credit and also imposed penalty of Rs.50,000/-.

2. Learned advocate for the appellants submits that in certain cases, credit was wrongly taken by mistake and the said mistake was detected by the appellant themselves during internal audit and the credit was reversed under intimation to the department. He also submits that they were having more credit in balance than the amount wrongly availed by them in respect of every month during the relevant period. In other words, though they have taken the credit wrongly, they have not utilised the same and derived no benefit. He relies on the decision of the Hon'ble High Court of Punjab and Haryana in the case of Ind-Swift Laboratories Ltd. vs. UOI reported as [2009 (240) ELT 328 (P& H) wherein it has been held that interest should be payable only from the date the credit was utilised.

3. Learned SDR seeks decision on merits.

4. I have carefully considered the submissions from both sides and perused the records. The relevant portion of the decision of the Hon'ble High Court of Punjab and Haryana in the case of Ind-Swift Laboratories Ltd is reproduced below :

> "11. Reliance of respondents on Rule 14 of the Credit Rules that interest under Section 11AB of the Act is payable even if CENVAT

Credit has been taken. In our view, said clause has to be read down to mean that where CENVAT credit has been taken and utilised wrongly, interest should be payable on the Cenvat credit taken and utilised wrongly. Interest cannot be claimed simply for the reason that the CENVAT credit has been wrongly taken as such availment by itself does not create any liability of payment of excise duty. On a cojoint reading of Section 11AB of the Act and that of Rule 3 and 4 of the Credit Rules, we hold that interest cannot be claimed from the date of wrong availment of CENVAT credit. The interest shall be payable from the date CENVAT credit is wrongly utilised."

5. In view of the above, it is clear that merely taking excess credit inadvertently without utilising the same does not result in any benefit to the assessee and that interest shall be leviable only when the said credit was utilised for paying the duty. Thus, I find that there is no loss of revenue.

6. In view of the above, order of the Commissioner is set aside and the appeal is allowed with consequential relief as per law.

(M. Veeraiyan)
Member(Technical)

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