

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

Appeal No. E/350-351 /2010 - EX[DB] WITH
E/S/367-368/2010-EX

Date 23/09/2010

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

To :
M/S. SUZUKI MOTORCYCLE (I) PVT. LTD.
VILLAGE KHERKI DAULA, BADSHAHPUR, N.H.8,
LINK ROAD, GURGAON.
M/S. SUZUKI MOTORCYCLE (I) PVT. LTD.

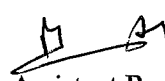
Appellant

Vs
Respondent

C.C.E. DELHI III

STAY ORDER NO.666-667/2010-EX

I am directed to transmit herewith a certified copy of Final order No. 655-656/ 2010 EX[DB] dated 09-8-10
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. DELHI III

UDYOG MINAR, UDYOG VIHAR, VANIJA NIKUNJ, PHASE V, GURGAON - 122016 (HARYANA)

2. Adv. / Consult

MR.R.S.TANDON

B-39, SFS, SHEIKH SARAI, PHASE-I, NEW DELHI-110017

3 C.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 Publications 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

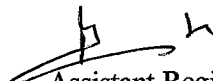
12 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Haryana)

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

16. HON'BLE PRESIDENT.


Assistant Registrar
(Excise Appeal Branch)

**CUSTOMS EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,**

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 9.8.2010

**Stay Application No.367 of 2010 in
Central Excise Appeal No.350 of 2010**

Arising out of the order in original No.82/SSS/CE/09 dated 1.12.2009 passed by the Commissioner of Central Excise, Delhi III, Gurgaon.

**Stay Application No.368 of 2010 in
Central Excise Appeal No.351 of 2010**

Arising out of the order in appeal No.355/MA/GGN/09 dated 19.11.2009 passed by the Commissioner of Central Excise (Appeals), Delhi III, Gurgaon.

M/s Suzuki Motorcyle (I) Pvt. Ltd.

... Applicant/appellant

Vs.

C.C.E., Delhi III, Gurgaon

.... Respondent

Appearance:

Shri R.S. Tandon, Advocate for the appellant/applicant
Ms. Monika Batra, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

STAY Oral Order No. 666-667/10-EX.

Per Justice R.M.S. Khandeparkar:

As we propose to dispose of the appeals, we allow the applications without insisting on pre-deposit of the amount demanded under the impugned order, while directing the registry to place the appeals for final hearing forthwith.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 9.8.2010

Central Excise Appeal No.350 of 2010

Arising out of the order in original No.82/SSS/CE/09 dated 1.12.2009 passed by the Commissioner of Central Excise, Delhi III, Gurgaon.

Central Excise Appeal No.351 of 2010

Arising out of the order in appeal No.355/MA/GGN/09 dated 19.11.2009 passed by the Commissioner of Central Excise (Appeals), Delhi III, Gurgaon

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter 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 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

M/s Suzuki Motorcyle (I) Pvt. Ltd.

... Applicant/appellant

Vs.

C.C.E., Delhi III, Gurgaon

.... Respondent

Appearance:

Shri R.S. Tandon, Advocate for the appellant/applicant
Ms. Monika Batra, Authorized Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

~~FIND~~ Oral Order No. 655-656/10-EX

Per Shri Justice R.M.S. Khandeparkar:

These matters are heard pursuant to the order passed in Stay Applications No.367/2010 and 368/2010. Heard the learned Advocate for the appellants and the SDR for the respondent. Since a common

questions of law and facts arise in both these matters, they were heard together and are being disposed of by this common order.

2. In both these matters, the appellants have been directed to pay interest in relation to cenvat credit wrongly availed by the appellants.

3. As far as appeal No.350/2010 is concerned, the case of the Department is that the appellants wrongly availed the cenvat credit during the period October 2004 to March, 2005 in the sense that the cenvat credit of 100% of the duty paid on the capital goods was sought to be availed in contravention of the provisions of Section 4(2)(a) of the Cenvat Credit Rules, 2004 and the same was subsequently reversed but failed to deposit the interest on the delayed reversal. The factum of availment of 100% of cenvat credit of duty paid on capital goods was revealed to the Department pursuant to the audit report. The appellants have been ordered to pay interest amounting to Rs.1,02,790/-.

4. As far as appeal No.351/2010 is concerned, the case relates to the period from April 2005 to June, 2005 and the appellants have been ordered to pay interest to the tune of Rs.45,841/- on the delayed reversal of the wrongly availed cenvat credit.

5. Learned Advocate for the appellants placing reliance in the decision of the Punjab & Haryana High Court in the matter of C.C.E., Delhi III vs. Maruti Udyog Limited reported in 2007 (214) ELT 173 (P & H) and the order of dismissal of SLP against the same as well as the order of the Tribunal in Rana Sugar Ltd. VS. C.C.E., Meerut II reported in 2010 (249) ELT 247 (Tri-Del.) submitted that the credit remained unutilised by 31st March 2005 as well as 31st March 2006 in respective cases and therefore, there was no justification for demand of interest in relation to unutilised cenvat credit.

6. Learned SDR on the other hand drawing our attention to Rule 14 as well as to the Circular No.897/17/2009-CX., dated 3.9.2009 of the Board submitted that the provision of law does not make difference between the availment and utilisation of the credit as far as liability to pay interest on

delayed reversal of such credit is concerned and therefore, no fault can be found with the impugned order. She further submitted that the decision of the Punjab & Haryana High Court was in relation to Rule 57 I of Central Excise Rules, 1944 which is not a *pari materia* with the provisions of law comprised under Rule 14 to Cenvat Credit Rules, 2004.

7. The Rule 14 of the Cenvat Credit Rules, 2004 provides that "where cenvat credit has been taken or utilised wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of Section 11A and 11AB of the Excise Act or Section 73 and 75 of the Finance Act, shall apply *mutatis mutandis* for effecting such recoveries". As rightly pointed out by the learned SDR that the Rule nowhere makes difference between the credit which was wrongly availed and the one which was wrongly utilised as far as the liability to pay interest thereon is concerned, at the time of reversal thereof.

8. In comparison to the provisions comprised under rule 14 of Cenvat Credit Rules, 2004, Rule 57 I (5) provided - " Notwithstanding anything contained in clause (iii) of sub-rule (1) or sub-rule (3), where the credit of duty paid on inputs has been taken wrongly on account of fraud, wilful misstatement, collusion, or suppression of facts, or contravention of any of the provisions of the Act or the rules made thereunder with intent to evade payment of duty, the person who is liable to pay the amount equivalent to the credit disallowed, as determined under clause (iii) of sub-rule (1), shall also be liable to pay interest at such rate as may be fixed by the Board under Section 11AA of the Act from the first day of the month succeeding the month in which the credit was wrongly taken, till the date of payment of such amount".

9. Obviously, the liability to pay interest under Rule 57 I was linked to the wrongful availment on account of fraud, wilful misstatement, collusion or suppression of facts or contravention of any of the provisions of the Rules

made thereunder with intent to evade payment of duty. Provisions apparently disclose that the intention to pay duty was essential ingredient to warrant demand of interest at the time of reversal of wrongly availed modvat credit in terms of the provisions comprised under Rule 57 I (5) of the Central Excise Rules, 1944. That is not the case in relation to Rule 14 of Cenvat Credit Rules. The decision of Punjab & Haryana High Court is essentially with reference to Rule 57 I. The same cannot be applied to the cases arising under Rule 14 as rightly observed by the Board in the Circular dated 3rd September 2009.

10. Dismissal of the SLP would not amount to confirmation of the decision of the Tribunal. The law in that regard is well settled by the Apex Court in *Kunhayammed vs. State of Kerala* reported in 2001 (129) ELT 11 (SC). In the matter in hand, undisputedly, the credit was wrongly availed and it was reversed on being pointed out by the Audit. Being so, taking into consideration the provisions of Rule 14 of the said Rules merely because it remained unutilised till the last date of financial year in which it was wrongly availed would not be a ground to contend that the appellants are not liable to pay interest.

11. The decision of the Tribunal in *Rana Sugar Ltd.* was on the peculiar facts and circumstances of the case which are revealed from para 5 of the decision. Therein, there was a clear finding by the Commissioner that the credit was not utilised as the production was yet to commence. The credit was availed for the period from January 2007 and February 2007 and it was pointed out in December 2007 to the assessee, and therefore, the amount was immediately deposited by the assessee. Besides, the order was delivered while placing reliance in the decision of the Punjab & Haryana High Court in the case of *Maruti Udyog Ltd.* Being so, the order cannot be held to be a decision on the point which arises for consideration in the matter in hand.

12. For the reasons stated above we find no infirmity in the impugned order and the appeals are liable to be dismissed and accordingly dismissed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/