CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO.III

Excise Appeal No.50919 of 2025

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-319-24-25 dated 30.12.2024 passed by the Commissioner (Appeals), CGST & Central Excise, Bhopal (M.P.)]

M/s. Bharat Heavy Electricals Ltd., **Appellant**
(Excise & Taxation Division),
Bock VI, Annexe WWGF,
P.O. Piplani Bhopal-462 022.

VERSUS

Principal Commissioner of CGST & **Respondent**
Central Excise,
35-G, GST Bhawan, Arera Hills,
Jail Road, Bhopal-462 011.

AND

Excise Appeal No.50920 of 2025

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-166-24-25 dated 25.10.2024 passed by the Commissioner (Appeals), CGST & Central Excise, Bhopal (M.P.)]

M/s. Bharat Heavy Electricals Ltd., **Appellant**
(Excise & Taxation Division),
Bock VI, Annexe WWGF,
P.O. Piplani Bhopal-462 022.

VERSUS

Principal Commissioner of CGST & **Respondent**
Central Excise,
35-G, GST Bhawan, Arera Hills,
Jail Road, Bhopal-462 011.

APPEARANCE:

Shri Z.U. Alvi, Advocate for the appellant.
Shri R.K. Mishra, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOs.51336-51337/2025

DATE OF HEARING: 08.09.2025
DATE OF DECISION: 22.09.2025

BINU TAMTA:

1. Bharat Heavy Electricals Ltd.[1] has filed the appeals challenging the Order-in-Appeal [2] confirming the order finalising the provisional assessment alongwith interest.

2. The appellant had applied for provisional assessment of the excisable goods supplied to the customers other than Indian Railways under the Central Excise Rules, 2002[3] on the ground that their supplies are made provisionally. All their contracts with customers other than the Indian Railways carry Price Variation Clause, which may result in positive or negative variation in price. They had, therefore, applied for provisional assessment supplied to customers other than the Indian Railways which was allowed by the jurisdictional Assistant Commissioner/Deputy Commissioner in terms of Rule(1). During the period 1st April, 2012 to 30.06.2017, the appellant had deposited differential duty amounting to Rs.22,97,35,231/- before finalisation of the provisional assessment. The provisional assessment was subsequently finalised vide Order dated 25.07.2023, however, the interest amounting to Rs.3,53,18,598/- was held to be payable under Rule 7(4) of the Central Excise Rules as amended read with Section 11AA/AB of the Act. On appeal, the impugned order has been passed confirming the interest as per Rule 7(4) on the differential amount. Being aggrieved, the appellant has preferred the present appeal.

3. The short issue in the present appeal is whether the appellant is liable to pay interest in terms of Rule 7(4) of the Rules following the order of finalisation of the provisional assessment.

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[1] **BHEL**
[2] **BHO-EXCUS-001-APP-319-24-25 dated 30.12.2024**
[3] **Rules**

4. For ready reference, Rule 7(4) is quoted below:-

> **"Rule 7(4)—**The Assessee shall be liable to pay interest on any amount paid or payable on the goods under provisional assessment, but not paid on the due date specified under sub-rule(1) of rule 8 and the first proviso thereto, as the case may be, at the rate specified by the Central Government, vide notification under section 11AA of the Act, for the period starting with the first day after the due date till the date of actual payment, whether such amount is paid before or after the issue of order for final assessment."

5. Shri Z.U. Alvi, learned Counsel for the appellant has relied on series of decisions in support of his submissions that the appellant is not liable to pay interest in terms of Rule 7(4). He has relied on the decision of the Bombay High Court in **CEAT Vs. CCE**[4]**,** where the decision of the Larger Bench of the Tribunal in **Cadbury India Ltd. Vs. Commissioner**[5] was disapproved and the decisions of the Tribunal in the case of **Ispat Industries Ltd. Vs. Commissioner**[6] and **Tata Motors Ltd. Vs. Commissioner**[7]was approved, where the differential duty was paid prior to the date of final assessment and it was held that the assessee cannot be saddled with the liability of interest in terms of Rule 7(4). The learned counsel, therefore, submitted that there is no liability to pay interest on the differential duty paid before finalisation of provisional assessment. The said decision has been affirmed by the Apex Court in **2016 (334) ELT A-161, 2016 (342) ELT A-181** and **2018 (362) A-32.**

6. The aforesaid decisions said to have been affirmed by the Apex Court are not by any speaking orders. However, subsequently the Apex Court in the case of Steel Authority of India Ltd versus Commissioner of C. Ex, Raipur[8] has decided the issue, whether interest is payable on the

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[4] **2015(317) ELT 192 (Bombay)**
[5] **2008(232) ELT 224 (Tribunal-LB)**
[6] **2007(209)ELT 280 (Tribunal)**
[7] **2008(226) ELT 563 (Tribunal)**
[8] **2019 (366) ELT 769 (SC)**

differential excise duty with retrospective effect that become payable on the basis of escalation clause under section 11 AB of the Central Excise Act, 1944. The Apex Court ruled that enhancement of the value will date back to the dates of removal in view of the retrospective operation. Admittedly, the liability for payment of differential duty has arisen. Upon the true value, in a case of retrospective escalation of price, though later agreed being received and consequential differential duty being admittedly payable, it would result in section 11A read with section 11 AB applying. It was also held that the price was variable under the escalation clause, which was very much within the knowledge of the assessee and the demand for interest is sustainable. In view of the law laid down by the Apex Court in a subsequent reasoned judgement is binding on us and following the same, we find that in the present case also, the contracts of the appellant with their customers, other than the Indian Railways carried the Price Variation Clause and so the appellant was aware that the provisional supplies made by them and for which provisional assessment was sought could result in variation of the price. In the circumstances, the deficit amount, which was paid subsequently would relate back and the appellant would be liable to pay interest.

7. The impugned order is, therefore, affirmed. The appeals are, accordingly allowed.

[Order pronounced on 22nd September, 2025]

(BINU TAMTA)
Member (Judicial)

(P.V. SUBBA RAO)
Member (Technical)

Ckp.