Po\IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 22.2.2017

Appeal No. E/299 & 300/2012-SM

(Arising out of Order-in-Appeal No. 177/RPR-I/2011 dated 8.11.2011 & 179/RPR-I/2011 dated 9.11.2011 passed by the Commissioner (Appeals), Customs & Central Excise, Raipur)

Jindal Steel & Power Ltd. Appellant

Vs.

CCE, Raipur Respondent

Appearance

Ms. Shreya Dahiya, Advocate - for the appellant

Shri Dharam Singh, D.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 52001-52002/2017

Per Ashok K. Arya :

M/s Jindal Steel & Power Ltd. has filed Appeal No. E/299/2012 against Order in Appeal No. 177/2011 dated 8.11.2011 and Appeal No. E/300/2012 against the Order in Appeal No. 179/2011 dated 9.11.2011 both passed by Commissioner (Appeals), Central Excise, Jaipur. Both the impugned orders in appeal, have denied Cenvat credit on certain inputs viz. parallel flange beam/column used in the manufacture of crane, discharge, chute, crane, gantry, crane column etc. (in Appeal No. 299/2012) and for trailer truck (in Appeal No. E/300/2011).

1.1 Further, in both the appeals, the impugned orders sustain the liability of interest for the period, when Cenvat credit was lying in the account of the appellant, though it was reversed later.

2. The appellant has been represented by the ld. Advocate, Ms. Shreya Dahiya and Revenue has been represented by ld. AR, Shri Dharam Singh.

3. After hearing both the sides and perusal of the record, it appears that the appellant M/s Jindal Steel & Power Ltd. is entitled to Cenvat credit on the subject inputs as the same have been used for manufacturing of capital goods which in turn have been used for manufacture of final product (sponge iron and hot re-rolled products) by the appellant company. The subject inputs are covered by the definition of input as laid down in Rule 2 (k) of Cenvat Credit Rules, 2004. In appellant's own cases CESTAT vide Final Order No. A/52840/2015 dated 9.9.2015 and A/52103/2016 dated 6.6.2016, allowed them benefit of Cenvat credit. Further following the Hon'ble Apex Court's decisions in the case of ***CCE Vs. Jawahar Mills Ltd.*** – 2001 (132) ELT 3 (SC) and ***CCE Vs. Rajasthan Spinning & Weaving Mills Ltd.*** – 2010 (255) ELT 481 (SC), the appellant is entitled to Cenvat credit for the subject inputs. Therefore, the impugned orders are modified to this extent and the appeal in this regard is partly allowed.

4. The appellant has another issue of 'liability of interest' on the inadmissible Cenvat credit amount for the period when the same was lying in their account, though not utilised, and later reversed. The appellant is arguing that they have not utilised the Cenvat credit though it was lying in their account that is why no interest be charged for the said amount.

4.1 The ld. Advocate in this regard in support cites the decision of Hon'ble Karnataka High Court in the case of ***CCE & ST, LTU, Bangalore Vs. Bill Forge Pvt. Ltd.*** - 2012 (279) ELT 209 (Kar.) and Larger Bench decision in the case of J.K. Tyre & Industries Ltd. Vs. Asst. Commr. of C. Ex., Mysore – 2016 (340) ELT 193 (Tri.-LB).

5. On the other hand, ld. AR, Shri Dharam Singh, vehemently argues that interest is liable to be paid even when the Cenvat credit has not been utilised by the assessee. In support he cites the decision of the Hon'ble Supreme Court in the case of ***Union of India Vs. Ind-Swift Laboratories Ltd.*** - 2011 (265) ELT 3 (SC), and Hon'ble Madras High Court decision in the case of ***CCE, Chennai-IV Vs. Sundaram Fasteners Ltd. -*** 2014 (304) ELT 7 (Mad.) and Hon'ble Chhattisgarh High Court's decision in the case of ***CCE, Raipur Vs. Vandana Vidyut Ltd. -*** 2016 (331) ELT 23 (Chhattisgarh) saying that there is interest liability arising against the assessee once they have wrongly availed Cenvat credit though it was reversed before utilisation.

6. After careful consideration of the facts on record and the submissions of both sides and case laws cited, it appears that the decisions cited by the appellant are not applicable to the present facts. The appellant has taken Cenvat credit wrongly/ inadvertently or on account of clerical errors / short receipt of material etc. though the same was reversed later. The issue is that for certain period i.e. till the said wrong Cenvat credit amount was reversed, it was in the assessee's Cenvat account like some money lies in one's bank's account though it is not withdrawn or used/spent by the account holder, and may be Bank may also give interest on the same. Here this credit has been taken by the assessee themselves, though may be inadvertently or on account of clerical error etc. The Hon'ble Supreme Court in the case of ***Ind-Swift Laboratories*** (supra) has analysed in detail the provisions of Rule 14 of Cenvat Credit Rules whereunder the recovery of Cenvat credit along with interest is made. The Hon'ble Supreme Court in the said decision *inter alia* observes as under :

> **15.** In order to appreciate the findings recorded by the High Court by way of reading down the provision of Rule 14, we deem it appropriate to extract the said Rule at this stage which is as follows :
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> "**Rule 14. Recovery of CENVAT credit wrongly taken or erroneously refunded :-** Where the CENVAT credit has been taken or utilized 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 Sections 11A and 11AB of the Excise Act or Sections 73 and 75 of the Finance Act, shall apply *mutatis mutandis* for effecting such recoveries."
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> **16.** A bare reading of the said Rule would indicate that the manufacturer or the provider of the output service becomes liable to pay interest along with the duty where CENVAT

credit has been taken or utilized wrongly or has been erroneously refunded and that in the case of the aforesaid nature the provision of Section 11AB would apply for effecting such recovery.

17. We have very carefully read the impugned judgment and order of the High Court. The High Court proceeded by reading it down to mean that where CENVAT credit has been taken and utilized wrongly, interest should be payable from the date the CENVAT credit has been utilized wrongly for according to the High Court 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. Therefore, High Court on a conjoint reading of Section 11AB of the Act and Rules 3 & 4 of the Credit Rules proceeded to hold that interest cannot be claimed from the date of wrong availment of CENVAT credit and that the interest would be payable from the date CENVAT credit is wrongly utilized. **In our considered opinion, the High Court misread and misinterpreted the aforesaid Rule 14 and wrongly read it down without properly appreciating the scope and limitation thereof. A statutory provision is generally read down in order to save the said provision from being declared unconstitutional or illegal. Rule 14 specifically provides that where CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest would be recovered from the manufacturer or the provider of the output service.** The issue is as to whether the aforesaid word "OR" appearing in Rule 14, twice, could be read as "AND" by way of reading it down as has been done by the High Court. If the aforesaid provision is read as a whole we find no reason to read the word "OR" in between the expressions 'taken' or 'utilized wrongly' or has been erroneously refunded' as the word "AND". **On the happening of any of the three aforesaid circumstances such credit becomes recoverable along with interest.**

18. …………………………………

19. A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency. In support of the same we may refer to the decision of this Court in *Commissioner of Sales Tax, U.P.* v. *Modi Sugar Mills Ltd*. reported in (1961) 2 SCR 189 wherein this Court at Para 10 has observed as follows : -

> "10. ……. In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed : it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."

> 20. Therefore, the attempt of the High Court to read down the provision by way of substituting the word ÖR" by an "AND" so as to give relief to the assessee is found to be erroneous. In that regard the submission of the counsel for the appellant is well-founded that once the said credit is taken the beneficiary is at liberty to utilize the same, immediately thereafter, subject to the Credit rules.".

(emphasis supplied)

6.1 Hon'ble Madras High Court in the case of ***CCE, Chennai-IV Vs. Sundaram Fasteners Ltd***. (supra) following the decision of Hon'ble Apex Court in the case of ***Ind-Swift Laboratories Ltd***. (supra) hold that reversal of credit would not amount to "no credit" having been taken, and irrespective of the utilization of the credit and going by the provisions, the interest on the wrong credit is called for as per Rule 14 of Cenvat Credit Rules.

6.2 Hon'ble Chhattisgarh in the case of ***CCE, Raipur Vs. Vandana Vidyut Ltd.*** (supra) again following the Hon'ble Supreme Court's decision in the case of ***Ind-Swift Laboratories Ltd***. (supra) Inter alia observes as under:

> "9. ……that under Rule 14, even if the Cenvat credit was taken by making paper entries by one not entitled to the same, the liability for interest arises irrespective of its reversal before utilization. The conclusion of the Tribunal that the Cenvat credit having remained a paper entry only liability for interest would not arise in absence of utilization was thus clearly erroneous."

6.3 The appellant in support has not cited any decision or Ruling of Hon'ble High Court of Delhi under whose jurisdiction this Bench of the CESTAT lies. However, considering the Hon'ble Supreme Court's decision in the case of ***Ind-Swift Laboratories*** (supra) which has also been discussed and cited by the Hon'ble Madras High Court in ***Sundaram Fasteners Ltd***. (supra) and by the Hon'ble Chhattisgarh High Court in ***Vandana Vidyut Ltd.*** (supra) the interest on the Cenvat credit amount for the period, when it was lying in the account of the assessee, is liable to be paid. In order to compute the liability of interest in this regard, the matter is remanded to the original adjudicating authority who shall decide the issue of amount of interest within four months of receipt of this order after giving an opportunity of personal hearing and submission of the documents to both sides.

7. In the result, the impugned orders are modified and the appeals are partly allowed in above terms.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

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