CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 22.05.2017

Excise Appeal No. 1774 of 2008

(Arising out of order in original No. 20/Commr.CEX/2008 dated 21.05.2008 passed by the Commissioner of Central Excise, Bhopal).

M/s H.E.G. Limited Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Sh. Hemant Bajaj, Advocate for the appellant
Sh. M.R. Sharma, AR for the Respondent

Coram:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53400/ 2017

Per: **B. Ravichandran**:

The appeal is against order dated 21.05.2008 of Commissioner of Central Excise, Bhopal. The appellants are engaged in the manufacture of graphite electrodes falling under heading 8545 liable to Central Excise duty. They are availing credit of Central Excise duty paid on inputs and capital goods and service tax paid on input service in terms of Cenvat Credit Rules, 2004. During the period 01.04.2005 to 30.10.2006 the appellants have availed erroneously, cenvat credit of service tax paid on certain services. The appellant claimed that they have taken the credit of Rs. 2,47,93,141/- due to error in computer system, which resulted in double entries. The said error was detected by the appellant in the month of October, 2006 and they have reversed the erroneous excess credit in the month of March, 2007. They indicated such reversal in the ER-1 return meant for March, 2007 filed with the Department on 09.04.2007. The appellant also paid interest of Rs.3,91,051/- towards credit which has been actually used by them (out of such erroneous credit) to discharge duty of final products upto March, 2007. On 18.09.2007, a show cause notice was issued to the appellant to demand and recover the above mentioned cenvat credit of Rs. 2,47,93,141/- in cash, alongwith interest and penalties under provisions of Central Excise Act, 1944 read with Cenvat Credit Rules, 2004. The case was adjudicated by the Commissioner. The Commissioner confirmed the demand of the above said amount. He mentioned that the appellant have to pay the said amount in cash and shall have the option to take the credit of said amount paid in cash. He imposed a penalty of equivalent amount in terms of Section 11AC of the Act read with Rule 15 of the Cenvat Credit Rules, 2004.

2. Ld. Counsel for the appellant submitted that due to an accounting error in the account programme, the appellants have inadvertently taken credit twice during the impugned period. They themselves detected the error and immediately reversed the excess credits alongwith applicable interest, attributable to utilised credit, and incorporated the details in ER-1 return for

the month of March, 2007. The interest applicable on the utilised portion of credit was later paid and intimated to the Department. He submitted that there is no ground at all to proceed against the appellant as the error of excess credit has been suo motu rectified and also wherever utilisation has happened, resulting in short payment of final product, the same has been compensated by applicable interest. There is no legal basis to demand the said amount in cash again. There is no ground at all to invoke penal provision against the appellant. Regarding interest he relied on certain case laws to submit that the interest is applicable only on that portion of credit utilised in discharging tax liability of their final product. They always carry substantial credit balance and the erroneous credit was never used to discharge liability. Only amount of Rs. 52,56,721/- was utilised out of erroneous excess credit in the month of August, 2006 for which the applicable interest has been calculated and discharged on 30.05.2007.

3. Ld. AR for the Revenue submitted that the appellant have taken huge cenvat credit attributing error of computer programme and for more than eighteen months such financial accommodation is not permissible in the law. He supported the finding of the original authority.

4. We have heard both the sides and perused appeal records. The admitted facts of the case are that the appellant did avail excess, erroneous credit amount of Rs.2,47,93,141/- during the impugned period. The full amount has been reversed by the appellant on their own is not under dispute.

The excess availment and its reversal has been duly entered in the statutory return filed by the appellant. In such situation, there is no ground to invoke penal proceedings against the appellant. There is no legal basis to impose penalty of equivalent amount invoking provisions of Section 11AC of Central Excise Act, 1944 and Section 78 of the Finance Act, 1994. We find no justifiable reason for such action.

5. Regarding the interest liability, the appellant strongly pleaded that they have utilised only Rs.51,56,721/- out of the excess erroneous credit taken and lying in the books of account, during the month of August, 2006. Other than this amount, the credit taken was lying in the books of the account and never put to use by the appellant. They have categorically mentioned the said facts with supporting chart and intimated the department. The liability of the appellant for interest has to be decided based on utilisation of the erroneous excess credit. The legal position regarding interest liability have been settled by various decisions of this Tribunal and Hon'ble High Court. Reference can be made to the decision of Hon'ble Madras High Court in the case of ***CCE, Madurai vs. Strategic Engineering – 2014 (310) ELT 509 (Mad.***) and the decision of the Tribunal in ***Grasim Bhiwani Textiles vs. CCE, Rohtak – 2016 (332) ELT 865 (Tri. Del.)***. The Tribunal relying on the decision of Hon'ble Karnataka High Court in the case of ***CCE&ST, Bangalore vs. Bill Forge Pvt. Limited -2012 (26) STR 204 (Kar.***) held that before utilisation of credit if the same has been reversed will amount to not taking credit and would not attract liability of interest.

Here we note that the ld. AR relied on the decision of the Hon'ble Supreme Court in the case of ***Union of India vs. Ind-Swift Laboratories Limited – 2011-TIOL-21-SC-CX***. The said decision has been examined and distinguished by various High Courts, including the Karnataka High Court in the case of ***Bill Forge Pvt. Limited*** (supra). In the appellant's own case a similar ratio has been followed in ***2016 (341) ELT 366 (Tri. Del.)***.

6. Considering the above discussion and analysis we find that there is no justification to demand and recover again the erroneous credit which is already reversed by the appellant. Interest liability shall be only with reference to the credit which are put to use to discharge duty on final products. This can be cross verified by the jurisdictional authorities.

7. With these observations the impugned order is set-aside and the appeal is allowed.

(Dictated and pronounced in the open Court).

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Pant