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

Date of Hearing/Decision: 22.5.2017

Appeal No. E/50207/2017-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-391-16-17 dated 21.10.2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal)

M/s V.E. Commercial Vehicles Ltd. Appellant

Vs.

CCE, Indore Respondent

Appearance

Shri Shashwat, Advocate Ms. Sukriti Das, Advocate	-	for the appellant
Ms. Kanu Verma Kumar, D.R.	-	for the respondent

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

Final Order No. 53405/2017

Per Ashok K. Arya :

M/s V.E. Commercial Vehicles Ltd. is in appeal against the Order-in-Appeal No. 391/16-17 dated 21.10.2016 whereunder demand for Cenvat credit amounting to Rs.12,46,869/- along with interest and penalty of Rs.6,23,385/- has been confirmed against the appellant.

2. The brief facts are that:

(i) The appellant is engaged in the manufacture of light, medium and heavy commercial vehicles falling under Chapter 87 of Central

Excise Tariff. The appellant availed credit of inputs, i.e raw material which were sent to job worker under Rule 4(5)(a) of the Cenvat Credit Rules, 2004.

(ii) The raw material sent to job worker was not received back by the appellant in their factory within 180 days, which is the period prescribed within which input has to come. If the raw material sent is not received back within 180 days, the manufacturer assessee is required to reverse the Cenvat credit taken for the said raw material, which appellant did not do.

(iii) After initial reversal of Cenvat credit, the assessee later took Cenvat credit for the said goods, when they were received back from the job worker in their factory.

(iv) However, the department was of the view that once goods were not received within 180 days, the appellant is not entitled to take Cenvat Credit, and therefore issued a Show Cause Notice proposing confirmation of demand of said Cenvat credit of Rs.12,46,769/- along with interest and penalty.

(v) The department vide order-in-original confirmed the said demand. Later, the appellant went in appeal before Commissioner

(Appeals), who confirmed the demand, interest and penalty. Therefore, the appellant is in appeal before the Tribunal.

3. With the background of above facts, both sides represented by ld. Counsels, Shri Shaswat and Ms. Sukriti Das, for the appellant and Ms. Kanu Verma Kumar for the Revenue have been heard.

4. After careful consideration of the facts on record and submissions of both the sides, it appears that the period involved in dispute is from 31.8.2010 to 23.1.2011 and Show Cause Notice has been issued on 7.4.2014 that is almost about three years, thus invoking extended period of limitation. However, there is no suppression of fact or wilful mis-statement etc. on the part of the appellant. That is why the Show Cause Notice issued for the present facts cannot be legally sustained. The merit of the demand does not need any comments as the Show Cause Notice itself is time-barred.

5. However, though the demand is time barred it is enjoined on the part of the appellant to honour the liability of interest automatically. The appellant has failed to honour the liability of interest which accrued automatically for the period, when they crossed the limit of 180 days' period within which the goods are required to be returned to principal manufacturer, who is the

appellant. The liability of interest is limited to the amount of Cenvat credit only for the period beyond 180 days, when goods were not returned and credit continued in the assessee's books of accounts. Hon'ble Supreme Court in the case of *Commissioner of Trade Tax, Lucknow Vs. Kanhai Ram Thekedar* - 2005 (185) ELT 3 (SC) has held that liability of interest is automatic on the assessee. In this regard, Hon'ble Supreme Court, though the decision mainly deals with sales tax it is applicable for Central Excise law of Union Government, has observed as under:

> "**12.** In the case of *The Sales Tax Officer, Sector I, Kanpur & Anr.* v. *M/s. Dwarika prasad Sheo Karan Dass*, (1977) 1 SCC 22, this Court has held that the assessee is liable to pay interest under Section 8(1-A) of the U.P. Sales Tax Act, 1948 on unpaid amount of tax and **that such liability arises automatically by operation of law**. This Court also held that fresh notice of demand not necessary where amount of tax or other dues reduced as a result of the appeal, revision or other proceedings.
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> **13.** This Court had an occasion to consider sub-section (1-A) of Section 8 of the Act in the case of *Haji Lal Mohd. Biri Works* v. *State of U.P.*, (1974) 3 SCC 137 and **held that the liability to pay interest under Section 8(1-A) of the Act is automatic and arises by operation of law.** It was further observed in that case that it is not necessary for the Sales Tax Officer to specify the amount of interest in the recovery certificate.
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> **14**. ....
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> **15**. ....
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> **16.** In the case of *Prahlad Rai & Ors.* v. *Sales Tax Officer, Meerut & Ors.*, 1991 Supp. (2) SCC 612, this Court had an occasion to consider the payment of interest on arrears of sales tax. In this case, the assessee contended that he had admittedly paid the entire arrears of sales tax voluntarily and, therefore, they did not become defaulters and not liable to pay interest. Rejecting the

> said argument, **this Court held that the accrual of interest is automatic and no separate notice of demand was required to be served in that respect.**
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> **17. Thus, we are of the opinion that the High Court was not justified for deleting the interest levied by the authorities on the ground that no notice was served.** ...."

(Emphasis supplied)

8. In the light of discussion and the observations of Hon'ble Apex Court (supra) only the liability of interest for the period exceeding the 180 days' limit when Cenvat credit continued in the assessee's account is sustained and for requantification of said liability of interest, the matter is remanded to the original adjudicating authority, who shall adjudicate the same within four months of issue of this Order and after giving opportunity of personal hearing and submission of documents, if any, to the appellant.

9. In the result, the impugned order is modified to above effect and appeal partly allowed in above terms.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

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