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

Date of Hearing/Order: 11.10.2017

Appeal No. E/3405/2012-SM

(Arising out of Order-in-Original No. 25/COMMR/CEX/STN/2012 dated 8.8.2012 passed by the Commissioner, Customs & Central Excise, Bhopal)

M/s Prism Cement Ltd. Appellant

Vs.

CCE, Bhopal Respondent

Appearance

Ms. Sukriti Das, Advocate - for the appellant

Shri K. Poddar, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 57433/2017

Per S.K. Mohanty:

Demand of interest for delayed reversal of Cenvat credit is the subject matter of present dispute.

2. The ld. Advocate appearing for the appellant submits that Cenvat credit taken on the basis of ISD invoice was reversed subsequently by the appellant and during the period between taking of such credit and its reversal, the appellant had adequate balance in its Cenvat account. Thus, she submits that in absence of non-

utilisation of such credit, interest liability cannot be fastened against the appellant. To support such stand, ld. Advocate has relied on the decision of this Tribunal in the case of appellant itself in ***Prism Cement, Unit-II Vs. CCE & ST, Bhopal*** - 2016 (333) ELT 107 (Tri.-Del.).

3. On the other hand, the ld. DR appearing for the respondent reiterated the findings recorded in the impugned order.

4. Heard both sides.

5. I find that the issue arising out of present appeal is no more res integra in view of the decision of this Tribunal in the case of ***Prism Cement*** (supra). The relevant paragraph in the said decision is extracted below :

> "**3.** I find that the irregularly availed Cenvat credit was reversed by the appellant upon detection of mistake by the Audit Wing of the Central Excise Department and before issuance of the SCN. It is an admitted fact that the irregularly availed Cenvat credit has not been utilized by the appellant for payment of Central Excise duty. In other words, the credit taken by the appellant was [all along] remained in the books of the appellant unutilized. Interest is compensatory in character and the same is due for payment only when the principal amount is paid belatedly. In the present case, since taking of credit is a mere book entry and the same has not been utilized by the appellant, the question of compensating the Government does not arise

because there is no loss of revenue to the Government exchequer. With regard to the payment of interest for late reversal of Cenvat credit, the Hon'ble Karnataka High Court in the case of *CCE & ST, LTU, Bangalore* v. *Bill Forge (P) Ltd.* reported in 2012 (279) E.L.T. 209 (Kar.) = 2012 (26) S.T.R. 204 (Kar.) has held that the credit taken if not utilized for payment of Central Excise duty, the same bears the character of a mere book entry and the interest liability cannot be confirmed against the assessee. In the above cited judgment, the Hon'ble Court further held that the judgment of Hon'ble Supreme Court in the case of *Ind Swift Laboratories* (supra) has been delivered in the entirely different set of facts, concerning interpretation of the Provisions of Rule 14 of the Cenvat Credit Rules, and thus, the principles decided therein are not applicable to the facts of the case. Since, the issue involved in the present case is identical to the facts in the *Bill Forge* (supra), I am of the view that demand of interest is not proper and justified in the present case, because the Cenvat credit taken by the appellant irregularly has not been utilized for clearance of final product.

6. In view of above, I do not find any merits in the impugned order. Accordingly, after setting aside the same, the appeal filed by the appellant is allowed.

(Dictated & pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

RM