IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Service Tax Appeal No. 50088 of 2014

[Arising out of Order-in-Original No. 36/2013 dated 18.09.2013 passed by the Commissioner of Central Excise & Service Tax, Bhopal]

M/s. Vardhman Fabrics. **Appellant**

Vs.

Commissioner of Central Excise Bhopal **Respondent**

Appearance:

Shri Rupendra Singh, Advocate for the Appellants
Shri Sanjay Jain, AR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 2.2.2018

FINAL ORDER NO. 50690 /2018

Per: V. Padmanabhan:

The present appeal is filed against Order in original No. 36/2013 dated 18.9.2013. The appellant is engaged in the manufacture of woven fabrics of cotton and other textile fabrics. They were availing Cenvat credit facility under the Cenvat Credit Rules, 2004. During the period 2006-07 to 2007-08, the department noticed that the appellant had availed Cenvat credit amounting to Rs.17.92 lakh on various service. However, subsequently the entire Cenvat credit was reversed. Since they were claiming the duty draw back of export of cotton fabric, the department was of the view that the appellant was liable to pay interest on such Cenvat credit from the period such credit was taken till the date on which such credit was reversed. Accordingly, interest was demanded in the impugned order. Aggrieved by this, the present appeal has been filed.

2. With the above background, we heard Shri Rupendra Sharma, learned advocate representing the appellant as well as Shri Sanjay Jain, leaner DR for the Revenue.

3. Learned Counsel submitted that cenvat credit so availed was never utilized and the same was reversed for the reason that the appellant was exporter of fabrics and claim draw back. He relied on various judgements to submit that the revenue was not justified in charging interest on such cenvat credit, specifically he referred to the following decisions:

1) CCE, Madurai vs. M/s. Strategic Engineering (P) Ltd. [2014-TIOL-466-HC-MAD-CX];

2) Gurmehar Constructions vs. CCE, Raipur [2014-TIOL-1205-CESTAT-Del]; and

3) CCE, Bangalore vs. Bill Forge Pvt. Ltd. [2012 (26) STR 204 (Kar)]

4. We have gone through various case laws cited by the appellant in which this issue regarding whether the interest is liable to be charged

when book entry has been considered and discussed. Learned DR referred to the decision of Apex Court in the case of ***Union of India vs. M/s. Ind-Swift Laboratories Ltd. [2011 (265) ELT 3 (SC)]***, in which the Hon'ble Supreme Court has held that the interest is liable to be paid even if such credit is reversed without utilization. But we find that Hon'ble High Court of Karnataka in the case of ***Bill Forge Ltd.*** (supra) has considered the issue in the light of observations of Apex Court in ***M/s. Ind-Swift Laboratories*** (supra) and has observed as under:

> ***"22. In the instant case, the facts are not in dispute. The assessee had availed wrongly the Cenvat credit on capital goods. Before the credit was taken or utilized, the mistake was brought to its notice. The assessee accepted the mistake and immediately reversed the entry. Thus the assessee did not take the benefit of the wrong entry in the account books. As he had taken credit in a sum of Rs. 11,691-00, a sum of Rs. 154-00 was the interest payable from the date the duty was payable, which they promptly paid. The claim of the Revenue was, though the assessee has not taken or utilized this Cenvat credit, because they admitted the mistake, the assessee is liable to pay interest from the date the entry was made in the register showing the availment of credit. According to the Revenue, once tax is paid on input or input service or service rendered and a corresponding entry is made in the account books of the assessee, it amounts to taking the benefit of Cenvat credit. Therefore interest is payable from that date, though, in fact by such entry the Revenue is not put to any loss at all. When once the wrong entry was pointed out, being convinced, the assessee has promptly reversed the entry. In other words, he did not take***

> ***the advantage of wrong entry. He did not take the Cenvat credit or utilized the Cenvat Credit. It is in those circumstances the Tribunal was justified in holding that when the assessee has not taken the benefit of the Cenvat credit, there is no liability to pay interest. Before it can be taken, it had been reversed. In other words, once the entry was reversed, it is as if that the Cenvat credit was not available. Therefore, the said judgment of the Apex Court has no application to the facts of this case. It is only when the assessee had taken the credit, in other words by taking such credit, if he had not paid the duty which is legally due to the Government, the Government would have sustained loss to that extent. Then the liability to pay interest from the date the amount became due arises under Section 11AB, in order to compensate the Government which was deprived of the duty on the date it became due. Without the liability to pay duty, the liability to pay interest would not arise. The liability to pay interest would arise only when the duty is not paid on the due date. If duty is not payable, the liability to pay interest would not arise."***

5. By following the decisions of Hon'ble Apex Court as well as other judicial forum cited by the appellant, we find no justification for demand of interest as required in the impugned order and hence, the impugned order is set aside and appeal is allowed.

(dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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