IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

<u>COURT –III</u>

Date of Hearing.06.08.2018
Date of Decision.08.08.2018

Appeal No. E/51664/2018-SMC
[Arising out of Order-in-Appeal No. DDN/CE/000/APPL-DDN/48/2017-18 dated 16/03/2018 passed by the COMMISSIONER OF CGST & CENTRAL EXCISE-Dehradun]

ESCORTS LTD **...Appellant**

Vs.

CGST C.C & C.E-DEHRADUN **... Respondent**

Appearance
Present for the Appellant : Mr. R.K. Hasija, Advocate.
Present for the Respondent : Mr. H.S. Saini, DR.

Coram:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. <u>52721/2018</u>

<u>PER: Ajay Sharma</u>

1. The instant appeal has been filed from the impugned order dated 16/03/2018 passed by the Commissioner (Appeals), Dehradun.

2. The issue involved in this appeal is whether the appellants are liable to pay interest and penalty on the wrongly availed Cenvat Credit amounting to Rs. 94,208/- despite the fact that much before the issuance of show cause notice they have reversed the same. This issue pertains to wrong availment of Cenvat Credit of Rs. 94,208/- on the basis of bill of entry dated 12/12/2013 which was in favour of the appellant's sister concern situated at the same address as that of the appellant i.e. 18/04, Mathura Road, Faridabad, Haryana.

3. During the course of audit by the departmental officers in the month of January, 2016 the discrepancy for the period 2013-14 was pointed out to the appellants and they realized their mistake and without contesting

or awaiting for show cause notice, they immediately paid back the amount of Rs. 94,208/- on 25/02/2016 itself to avoid any penal action. A show cause notice for the wrong availment of Cenvat Credit was issued to the appellants on 16/05/2016 and the same was adjudicated vide Order-in-Original dated 31/03/2017 by which the adjudicating authority confirmed the demand of Rs. 94,208/- along with interest under Section 11AA and penalty of equal amount under Section 11AC of the Central Excise Act, 1944 read with Rule 15 of Cenvat Credit Rules, 2004. On appeal the Ld. Commissioner vide impugned order dated 16/03/2018 rejected the appeal and confirmed the demand.

4. I have heard Ld. Counsel for the appellant and Ld. AR for the Department and perused the record. The Ld. Counsel for the appellants submitted that the bill of entry in question was lended in there unit inadvertently and the Cenvat Credit on the same was taken unmindfully by the junior clerical staff entrusted to maintain the records in routine manner and no malafide or fraudulent intention can be attributed on the part of the appellants. He further submitted that there was no suppression, misstatement, collusion, fraud with intention to evade payment, and that had there been any malafide intention or otherwise then the appellants would not have paid the amount even before the issuance of show cause notice. He further submitted that although mistake is there but the same is not deliberate or willful to cause a loss to the Government Exchequer. He also submitted that the appellants had sufficient balance of Cenvat Credit in their account throughout the period of wrong availment and they did not utilised the wrongly availed credit.

5. The Ld. AR appearing for the Department reiterated the findings recorded in the impugned order.

6. It is not disputed that on pointing out by the audit team of the Department immediately the appellants reversed the credit on 25/02/2016 whereas the show cause notice for the same was issued on 16/05/2016. In other words the appellants immediately reversed the Cenvat Credit wrongly availed by them on pointing out by the Department. This itself shows that there is no intention on the part of the appellants to evade payment of tax rather they were having sufficient balance in their Cenvat Credit account. To attract levy of penalty as per the provisions of Section 11AC of the Central Excise Act 1944 the Revenue has to prove that the appellant has availed the Cenvat Credit wrongly by reason of fraud or collusion or any willful misstatement or suppression of facts, which the Department has failed to establish in the present case. Since the appellants did not utilized the cenvat credit wrongly taken and reversed it before utilization, therefore, it amounts to non-taking of credit. I do not find that there was any intention on the part of the appellants in defrauding the Revenue in as much as the appellants have sufficient balance in their Cenvat Account for discharging the duty liability. Similar issue was raised before this Tribunal in the matter of ***E/51040/2017*** titled as ***M/s Rallison Electricals Ltd. V/s CCE, Alwar***, wherein this Tribunal vide Final Order No. 56815/2017 dated 30/08/2017 while relying upon the decision of the Hon'ble High Court of Karnataka at Bangalore in the matter of ***CCE & ST, Bangalore V/s Bill Forge Pvt. Ltd. 2012 (26) STR 204 (kar.)*** has held that since the appellants therein was having sufficient balance in their Cenvat Credit account, therefore, the appellant is not liable to pay the interest. The relevant extract of the said order is as under:-

"5. Heard *the parties. Considered the submissions.*

<u>Issue of Interest</u>

It is a fact on record that the appellant was having sufficient balance in their Cenvat credit account. Therefore, following the ration laid down by Hon'ble Karnataka High Court in the case of Bill Forge (supra), the appellant is not liable to pay the interest. Therefore, the demand of interest made in impugned order is set aside.

<u>Imposition of penalty</u>

In this case, the appellant immediately reversed the cenvat credit excess availed by tem on pointing out by the department. Therefore, in that circumstances, malafide cannot be attributable against the appellant and no proceedings were required to be initiated against the appellant under section 11A (2B) of the Act. The contention of the Ld. AR that ignorance of law is no excuse, I do agree with the contention of Ld. AR but on pointing out by the revenue to the appellant, the appellant immediately reversed the cenvat credit. In that circumstances, it has to be seen that whether there was any malafide intention to avail excess cenvat credit or not and the appellant has not disputed the reversal of cenvat credit. Therefore, I hold that penalty on the appellant is not imposable.

6. In the result, the demand of interest and penalty imposed on the appellant are set aside. Consequently, the appeal is allowed."

7. Therefore, in view of the facts of this case and in view of the decision of the Hon'ble Karnataka High Court as well as the order of this Tribunal, the appeal filed by the appellant is allowed.

(Order pronounced in the open court on _08/08/2018)

(Ajay Sharma)
Member (Judicial)

Rekha