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

Date of Hearing/Order : 6.11.2018

Appeal No. E/53216/2018-DB

(Arising out of Order-in-Appeal No. 706(CRM)CE/JDR/2018 dated 4.7.2018 passed by the Commissioner (Appeals), CGST, Jodhpur)

M/s Hindustan Zinc Ltd. — Appellant

Vs.

CGST, Udaipur — Respondent

Appearance

Shri Hemant Bajaj, Advocate - for the appellant

Shri V.B. Jain, D.R. - for the respondent

CORAM: **Hon'ble Mr. Anil Choudhary, Member (Judicial)**
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No. 53224/2018

Per Bijay Kumar:

The issue involved in the present case is that whether the appellant is liable to pay interest in respect of duty paid before the finalisation of provisional assessment.

2. Shri Hemant Bajaj, ld. Advocate appearing on behalf of the appellant submits that the issue is no longer res integra as this issue has been considered in various judgements:

(a) ***CEAT Ltd. Vs. CCE, Nashik*** – 2015 (317) ELT 192 (Bom.)

[Maintained by Hon'ble Supreme Court in ***Commissioner Vs. CEAT Ltd.*** – 2016 (342) ELT A181 (SC)]

[Maintained by Hon'ble Supreme Court in ***Commissioner Vs. CEAT Ltd***. – 2016 (334) ELT A161 (SC)]

[Maintained by Hon'ble Supreme Court in **Commissioner Vs. CEAT Ltd.** – 2018 (362) ELT A32 (SC)]

(b) ***CCE Nagpur Vs. Ispat Industries Ltd.*** – 2010 (259) ELT 662 (Bom.) – Affirmed by Hon'ble Supreme Court in ***Commissioner Vs. Ispat Industries Ltd.*** – 2014 (301) ELT A70 (SC)

(c) ***Cadbury India Ltd. Vs. CCE, Mumbai,*** Final Order No. A/86513-86514/2018 (Tri.-Mumbai)

3. Shri V.B. Jain, ld. DR appearing on behalf of the Revenue reiterate the findings in the impugned order.

4. On careful consideration of the submissions made by both sides, we find that the issue is no longer res integra, as the same has been decided in various judgements cited by the ld. Counsel. In the case of ***Ispat Industries Ltd.*** (supra), the Hon'ble Bombay High Court passed the following order:

> "**2.** This appeal has been admitted on the following question of law :
>
> > *"Whether the CESTAT was right in holding that in terms of the provisions of Rule 7(4), respondent No. 1 could not be held liable to pay the interest on the differential duty as the duty amount has been paid prior to the final assessment, especially when provisions of Rule 7(4) of Central Excise Rules, 2002 read with*

> *Section 11AB(2B) of Central Excise Act, 1944, explicitly stipulates that interest is payable on delayed payment of any amount, at the appropriate rates from the first day of the month succeeding the month for which such amount is determined till the date of payment thereof."*

> **3.** Perusal of the order of the CESTAT [2007 (209) E.L.T. 280 (Tribunal)] shows that in the present case, differential duty was paid prior to the date of final assessment. Interest under Rule 7(4) of the Central Excise Rules, 2002 is payable from the first date of the month succeeding the month for which such amount is determined by the final assessment till the date of payment. Since differential duty was paid even before the final assessment was made, the Tribunal has held that the respondent assessee is not liable to pay interest. In our opinion, no fault can be found with the order of the Tribunal. Accordingly, question raised by the revenue is answered in favour of the assessee and against the revenue. The appeal is disposed of. No order as to costs."

5. The SLP filed by the department against the aforesaid judgement of the Hon'ble Bombay High Court was dismissed by the Hon'ble Supreme Court in ***Commissioner Vs. Ispat Industries Ltd.*** – 2014 (301) ELT A70 (SC).

6. In view of the above judgements, the issue is no more under dispute, accordingly the impugned order is set aside and the appeal is allowed.

(Pronounced in open Court)

(Anil Choudhary)	(Bijay Kumar)
Member (Judicial)	Member (Technical)

RM