IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 75303 of 2017

(Arising out of Order-in-Original No. 11/COMMR/BOL/2016 dated 03.11.2017 passed by Commissioner of CGST & Central Excise, Bolpur.)

M/s Shyam Sel & Power Ltd., (PD-Unit-II)
(Bijoynagar More, Jamuria, Bahadurpur,
Dist.- Burdwan, W.B.-713362)

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Bolpur,
(Nanoor Chandidas Road, Sian,
Bolpur, Dist.- Birbhum, W.B.-731204)

.. ...**Respondent**

APPERANCE :

Ms. Subhangi Lata, Chartered Accountant for the Appellant
Shri S. K. Singh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER No…76930/2025

DATE OF HEARING : 11.07.2025
DATE OF DECISION : 11.07.2025

PER R. Muralidhar :

The appellant is manufacturer of final products like TMT Bars, M.S. Joists, M.S. Angles etc. of Chapter 72 CET. The appellant take CENVAT credit of duty paid on the inputs and capital goods and the service tax paid on the inputs services. During the period April 2010 to March 2011, they have taken Cenvat credit for Boiler, parts thereof and other items as capital goods and during the same year cleared the same to their sister unit by reversing the credit taken. However, on the ground that the goods in question were never meant to be used in the appellant's unit and hence, taking of the cenvat credit is irregular, a Show Cause Notice was issued on 16.04.2015, proposing to recover the Cenvat Credit of Rs.1,15,58,527/-, along with interest and to impose penalty. The SCN was issued by invoking the extended period provisions. After due process, the Adjudicating authority confirmed the demand, appropriated the reversed credit of RS.1,15,58,527 and charged interest of Rs.2,44,031 imposed penalty equal to the confirmed demand. Being aggrieved, the appellant is before the Tribunal.

2. The Ld Consultant appearing for the appellant, makes the following submissions:

2.1 The captioned Capital Goods were always intended to be used for the Appellant's Unit and hence, the allegation raised in captioned Order-In-Original that such items were not meant for their unit is not sustainable and the same should be set aside in the interest of justice

2.2 The appellant has been engaged in the manufacture of different types of Mild Steel Products during the material period, the production of which involves high power consumption and accordingly, with an intent to minimize the variable cost viz. cost of power consumption, the appellant has intended to develop own captive power plant. The appellant intention to set up captive power plant by the appellant would be evident from the Agreement dated 09-02-2010 between the Contractor cum Supplier of the said goods and the Appellant, enclosed at Page 49 to 162 of Appeal Paper book. Further, the Agreement dated 24-02-2009 with the Equipment Supplier is enclosed as Page 163 to 172 of Paper book.

2.3 The appellant has stated by enclosing the copy of Purchase Ledger/Journal Voucher, Page 173 to 284 of Paper Book, that the purchase of the said Boiler Parts has been accounted for as capital work-in-progress in the account of the appellant and that the said Boiler and parts thereof consigned part by part to the appellant's factory have also been duly accounted for in the CENVAT Credit Stock Account of Capital Goods.

2.4 Hence, from the aforesaid, it is an established fact that the Appellant had always intended to use the said Capital Goods in the factory. However, the said Boiler and Parts thereof have been right away required by the adjacent sister unit for setting up a captive power plant, the said capital goods have been cleared ·as such to the sister unit under invoice and on payment of an amount equal to the credit taken on such goods in terms of Rule 3(5) of the CENVAT Credit Rules, 2004.

2.5 In view of aforesaid submission, the allegation raised in the captioned Order that such Capital Goods were never intended to be used in the factory of the Appellant is without any evidence or basis, such an frivolous allegation is not sustainable and the same should be set aside in the interest of justice.

2.6 The Appellant has correctly claimed CENVAT Credit based on relevant provision of 1st Proviso to sub-rule (2)(a) of Rule 4 of the CENVAT Credit Rules, 2004 and has paid Excise Duty on clearance as such in terms with sub-rule (5) of Rule 3 of the CENVAT Credit Rules, 2004

2.7 The Ld. Commissioner has overlooked the 1st Proviso to sub-rule (2)(a) of Rule 4 of the CENVAT Credit Rules, 2004, which is, as under:

> *"Provided that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if such capital goods are cleared as such in the same financial year.,,*

2.8 The Commissioner has noted his finding that in terms of the definition of "capital goods", the Boiler and parts thereof must be used in the factory but the said goods, instead of using in the manufacturing activity/process, have been removed as such from the factory. It is most humbly submitted that the Ld. Commissioner has overlooked the 1st Proviso to sub-rule (2)(a) of rule 4 of the CENVAT Credit Rules, 2004 and failed to appreciate that taking of credit on the capital goods is not conditional to the use of it and that the capital goods on which the credit has been taken can be cleared as such from the factory without putting it to use in the factory.

2.9 Reliance is placed on relevant provision of sub-rule (5) of Rule 3 of the CENVAT Credit Rules, 2004, which reads, as under:

> *"When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an* ***amount equal to the credit availed in respect of such inputs or capital goods and such removal*** *shall be made under the cover of an invoice referred to in Rule 9: ... "*

2.10 Without prejudice to aforesaid that though the Appellant was eligible to avail and utilize the CENVAT Credit taken on such Capital Goods, the CENVAT Credit taken on such Capital Goods has not been utilized towards payment of duty on the final products and hence, there is no question of payment of Interest and Penalty in the instant case

2.11 It is to be noted that the Capital Goods were cleared as such from the factory of the manufacturer during January 2011 to March 2011, in this regard, the appellant is enclosing herewith the Excise Return filed for February 2011 and March 2011, the closing balance of CENVAT Credit is stated here-in-below for ease of reference.

Sl. No.	Particulars	CENVAT	EC on Excise	SHEC on Excise
1	Closing Balance of Credit as on 31-01-2011 (Jan'11)	3,30,26,897	6,96,423	3,44,493
2	Closing Balance of Credit as on 28-02-2011 (Feb'11)	3,17,68,694	6,71,279	3,31,905
3	Closing Balance of Credit as on 31-03-2011 (Mar'11)	2,83,22,723	6,02,363	2,97,432

2.12 From the aforesaid closing balance of CENVAT Account, it is evident the Appellant has never utilised CENVAT Credit taken on Capital Goods towards payment of duty on the final products and hence, there is no question of payment of Interest and Penalty in the instant case.

2.13 Reliance is placed on the judgment of **Ms. Steel Authority of India Limited v. Commr. of Central Excise, Durgapur [Excise Appeal No. 76951 of 2016],** wherein this Hon'ble Tribunal vide Final Order 76363-76365/2025 dated 13-05-2025 has held that if CENVAT Credit is only taken, it remains in the books of account and hence it cannot be said to be utilized and in such cases Interest and Penalty cannot be imposed.

2.14 The captioned demand is barred by limitation in as much that the demand has been raised after more than 4 years of availment of CENAVT Credit and after 2 years from issuance of Audit Memo. The Audit Query in the instant case was raised vide C. No. V(30)17/ Prof/Gr.C/IA/C.Ex./BOL/11 dated 21-03-2012. The availment of credit has been shown in the ER 1 Returns and similarly clearances also have been properly accounted for the monthly Returns. The Invoices for dispatch clearly show the remark that 'they are being cleared as such under Rule 3 (5) of the CCR 2004. Thus there is no suppression on the part of the appellant. Hence, such demand cannot be held to be sustainable on the point of limitation.

3. In view of the aforesaid submissions, it is prayed that the appeal may be allow both on merits as well as on account of limitation.

4. The Ld. AR appearing for the Revenue submits that the appellant has taken the credit knowing fully well that they are not going to use the goods in question in their factory premises. In the very same year, they have transferred the entire goods to their sister concern. This shows that they never intended to use them for their manufacturing purposes. This contravention came to knowledge only on account of audit verification and hence, there is case of suppression. Accordingly, he

justifies the confirmed demand, interest and penalty and prays that the appeal may be set dismissed.

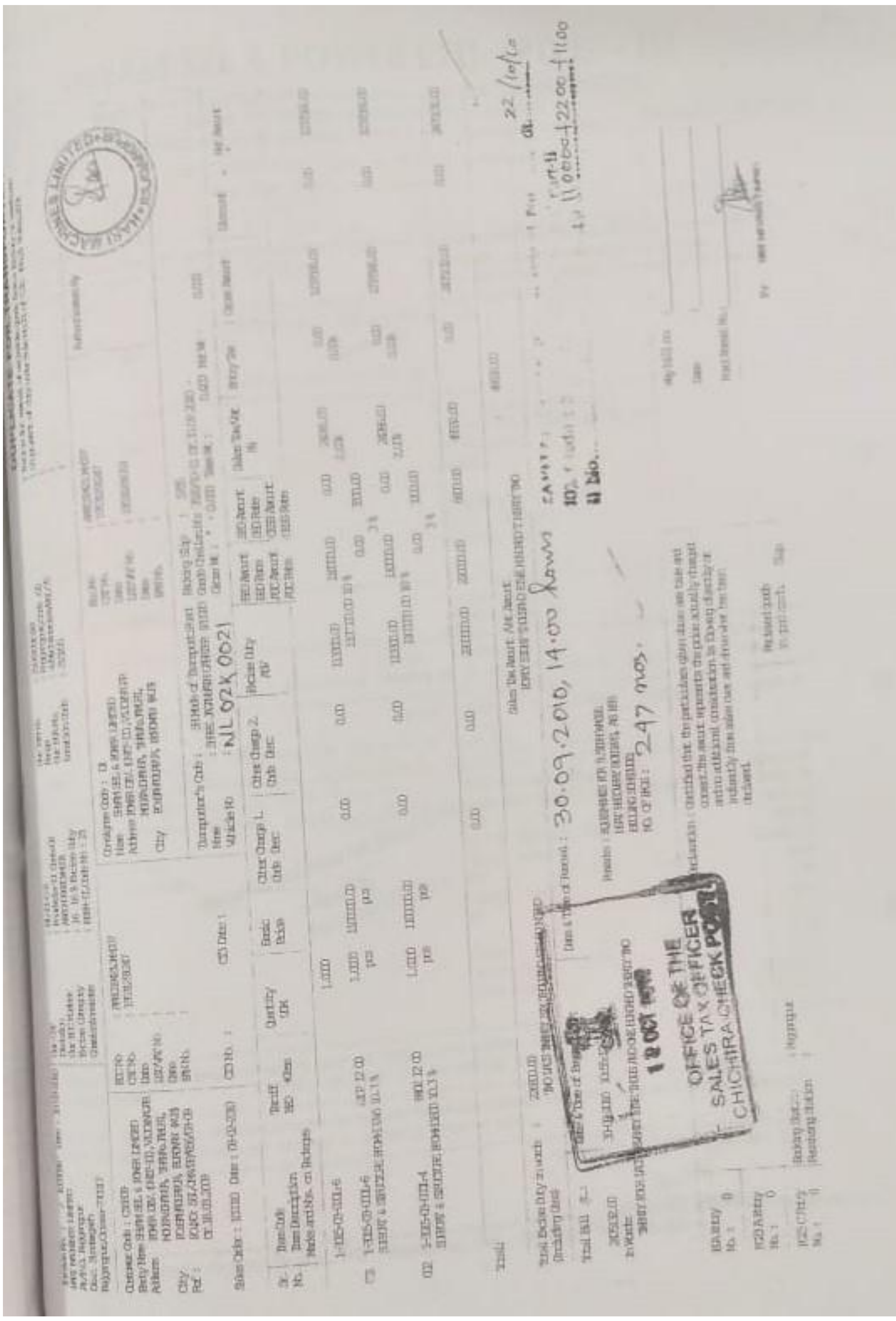
5. Heard both the sides and perused the appeal papers and submissions made by both the sides.

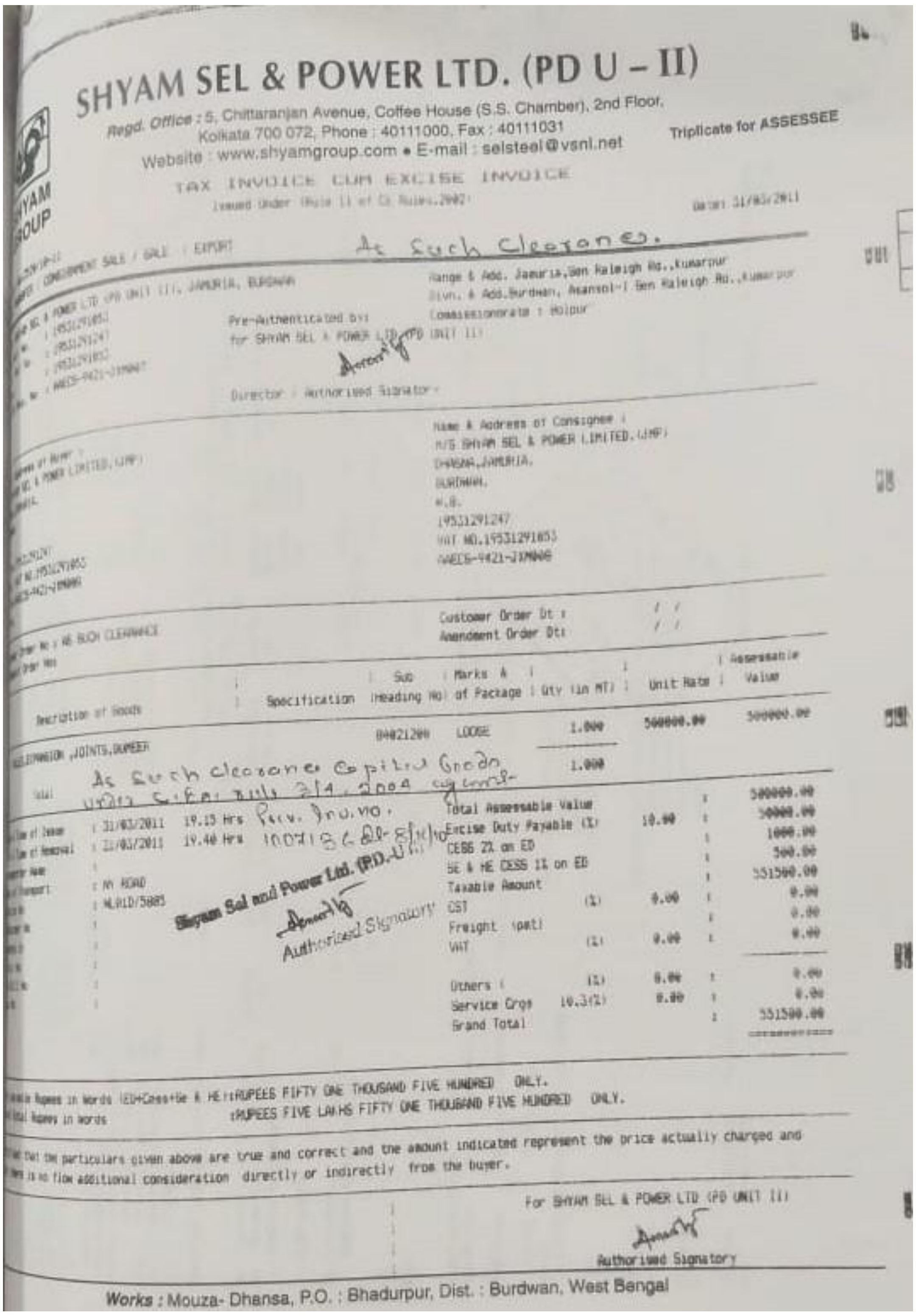
6. Without any dispute, the appellants have taken the Cenvat credit, on Boiler and other connected parts when the same was received in their factory. From the documentary evidence submitted, we find that the appellant has placed the orders on the vendors and the goods have been received under proper Central Excise Invoices. The particulars given in such invoices are that of the appellant. The finished goods manufactured by the appellant would require installation of such capital goods for carrying out the manufacturing activity. Therefore, we do not find any merit in the Revenue's contention that the appellant never intended to use the machinery in their plant or they were not capable of using the same in their plant. Again we find that the Cenvat Credit cannot be denied on account of non-installation of the machinery. Those olden days wherein the assessee was required to install and get it certified and submit the details to the Range / Division are gone many decades ago. Now the only plausible avenue to demand the duty would be if the cenvat availed capital goods are cleared without payment of duty, because of which the assessee can be fastened with the allegation that even without the presence of the machinery in the plant, they are using the Cenvat Credit.

7. In the present case, on perusal of Page Nos.376 to 379, which is also Annexure – D of the SCN, the details of the Invoices under which the goods have been received by the appellant has been given. The Cenvat Credit taken under these invoices have been taken by the Revenue to quantify the Excise Duty demand. The appellant has cleared these goods under their Invoices to their sister concern on reversal of the Cenvat Credit, as is reflected from the outward Invoice-wise statement provided at Page Nos.374 and 375 of the Appeal Book. As a matter of fact, the Revenue does not dispute that the entire cenvat credit of

Rs.1,15,58,527/- stands reversed by the appellant when the goods were cleared to the appellant's sister concern. The reversed amount has also been appropriated in the Order in Original.

8. The sample Purchase Invoice and Outward Invoice are extracted:


NL 02K 0021
30.09.2010, 14.00 hours
247 nos
12 OCT
OFFICE OF THE
SALES TAX OFFICER
CHICHIRA CHECK POST



SHYAM SEL & POWER LTD. (PD U – II)

Regd. Office : 5, Chittaranjan Avenue, Coffee House (S.S. Chamber), 2nd Floor, Kolkata 700 072, Phone : 40111000, Fax : 40111031

Website : www.shyamgroup.com • E-mail : selsteel@vsnl.net

Triplicate for ASSESSEE

TAX INVOICE CUM EXCISE INVOICE

Issued Under (Rule 11 of CE Rules,2002)

Dated: 31/03/2011

As Such Clearances.

CONSIGNMENT SALE / SALE / EXPORT

Range & Add. Jamuria,Sen Raleigh Rd.,Kumarpur

Divn. & Add.Burdwan, Asansol-I Sen Raleigh Rd.,Kumarpur

Commissionerate : Bolpur

Pre-Authenticated by:
for SHYAM SEL & POWER LTD (PD UNIT II)

Director / Authorised Signatory

Name & Address of Consignee :
M/S SHYAM SEL & POWER LIMITED.(JMF)
DHANSA,JAMURIA,
BURDWAN,
W.B.
19531291247
VAT NO.19531291053
AAECS-9421-JXM008

Customer Order Dt : / /
Amendment Order Dt: / /

Order No : AS SUCH CLEARANCE

Description of Goods	Specification	Sub Heading No	Marks & of Package	Qty (in MT)	Unit Rate	Assessable Value
EXPANSION JOINTS,DUMEER		84021200	LOOSE	1.000	500000.00	500000.00
Total				1.000		

As such clearance Capital Goods under C.Ex. Rule 3(4), 2004 against Recv. Inv. No. 100718 C&D-8(11)10

Date of Issue : 31/03/2011 19.15 Hrs

Date of Removal : 31/03/2011 19.40 Hrs

Mode of Transport : BY ROAD

NL01D/5885

Shyam Sel and Power Ltd. (PD.U-II)
Authorised Signatory

Total Assessable Value			500000.00
Excise Duty Payable (%)	10.00	:	50000.00
CESS 2% on ED		:	1000.00
SE & HE CESS 1% on ED		:	500.00
Taxable Amount		:	551500.00
CST (%)	0.00	:	0.00
Freight (pmt)		:	0.00
VAT (%)	0.00	:	0.00
Others (%)	0.00	:	0.00
Service Crgs 10.3(%)	0.00	:	0.00
Grand Total		:	551500.00

Rupees in Words (ED+Cess+SE & HE) : RUPEES FIFTY ONE THOUSAND FIVE HUNDRED ONLY.

Total Rupees in Words : RUPEES FIVE LAKHS FIFTY ONE THOUSAND FIVE HUNDRED ONLY.

Certified that the particulars given above are true and correct and the amount indicated represent the price actually charged and there is no flow additional consideration directly or indirectly from the buyer.

For SHYAM SEL & POWER LTD (PD UNIT II)

Authorised Signatory

Works : Mouza- Dhansa, P.O. : Bhadurpur, Dist. : Burdwan, West Bengal

9. These show that on both sides the duty has been paid. The appellant’s Invoice states ‘As such clearance’ and also gives the details of the concerned inward-invoice on which the cenvat was taken. Therefore, this is a case of clearance of the cenvat availed goods under Rule 3(5) of the CCR 2004. Hence, we do not find any positive case has been made by the Revenue in the present proceedings about any contraventions of Cenvat Credit Rules 2004.

10. Therefore, the only issue to be decided in this case is as to whether the appellant is required to pay the interest and whether they are liable for the penalty imposed.

11. It would be important to go through the Rule 14 of CCR applicable for the period under dispute, which reads as under:

> **<u>Till 16.03.2012</u>**
>
> “Where the CENVAT credit has been **<u>taken or utilised</u>** wrongly or has been erroneously refunded the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries."

12. Subsequently with effect form 17.03.2012, the words ‘Taken or Utilized’ were replaced with the words ‘Taken and Utilized’. To get even more clarity with effect from 1.3.2015, the words were changed to “ Where the CENVAT credit has been taken wrongly but not utilized”

13. We have called for the Cenvat Credit balance details through the period April 2010 to March 2011 to ascertain as to whether the Cenvat credit taken on the goods in question amounting to Rs.1,15,58,527 can be held as ‘not-utlized’. The appellant has provided the copies of the ER 1 Returns and the Table containing the monthly balance of Cenvat Credit, which is reproduced below:

Shyam Sel and Power Limited [Excise No. AAECS9421JXM007]
Details of closing balance of CENVAT Credit as per Excise Return Filing

Month	CENVAT	EC	SHEC	Total
Apr-10	3,87,97,118	8,11,899	4,00,280	4,00,09,297
May-10	3,66,28,162	7,68,518	3,78,595	3,77,75,275
Jun-10	4,27,29,802	8,90,467	4,41,490	4,40,61,759
Jul-10	4,26,37,196	8,89,625	4,39,626	4,39,66,447
Aug-10	4,04,88,624	8,45,653	4,19,081	4,17,53,358
Sep-10	3,74,64,154	7,85,157	3,88,833	3,86,38,144
Oct-10	3,54,98,885	7,45,854	3,69,187	3,66,13,926
Nov-10	3,54,78,129	7,45,435	3,68,982	3,65,92,546
Dec-10	3,29,61,965	6,95,111	3,43,827	3,40,00,903
Jan-11	3,30,26,897	6,96,423	3,44,493	3,40,67,813
Feb-11	3,17,68,694	6,71,279	3,31,905	3,27,71,878
Mar-11	2,83,22,723	6,02,363	2,97,432	2,92,22,518

14. From the above statement, it is seen that the appellant has been maintaining much more balance than the cenvat of Rs.1,15,58,527 taken by them. During the period under dispute as to whether interest is required to be paid when the cenvat credit taken was 'not utilized' was before several Tribunals and High Courts. It was consistently being held that if the cenvat is not 'utlized' there would be no requirement to pay the interest. In order give rest to the litigations, subsequent amendments were carried out to Rule 14 of CCR 2004.

15. The Karnataka High Court in the case of **CCE&ST LTU Bangalore Vs Bill Forge Pvt Ltd. 2012 (279) E.L.T. 209 (Kar.),** held as under :

> "**11.** Therefore it is clear that <u>the liability to pay interest under Section 11AB arises when the assessee is liable to pay duty on the date which is prescribed under sub-section (1), fails to pay the same. Then the liability to pay interest arises from the date the duty is payable till the date it is paid. By such late payment or delayed payment, the Revenue is deprived of the duty. The said amount would be in</u>

possession of the assessee who would have the benefit of the said amount. It is to compensate the loss sustained by the Revenue, the interest is imposed, i.e., interest is payable for the period during which the Revenue is deprived of the duty, which it was legitimately entitled to and as the assessee had the benefit of the duty by not paying the duty payable on the due date. In other words it is compensatory in character, and is imposed on the assessee who has withheld payment of any tax as and when it is due and payable.

17. As is clear from the aforesaid judgments, the Apex Court in the case of *Union of India* v. *M/s. Ind-Swift Laboratories Ltd.,* was essentially concerned with the interpretation placed by the Punjab and Haryana High Court where it had held that Rule 14 of the Cenvat Credit Rules, 2004 had to be read down to mean that where Cenvat credit has been taken or utilized wrongly interest should be payable on the Cenvat credit from the date the said credit had been utilized wrongly and that interest cannot be claimed simply for the reason that Cenvat credit has been wrongly taken, as such availment by itself does not create any liability of payment of excise duty. Further they held that the word 'OR' appearing in Rule 14 twice could be read as 'AND' by way of reading it down. Disagreeing with the said reasoning, the Apex Court held that Rule 14 specifically provides that where Cenvat has been taken or utilized wrongly or has been erroneously refunded, the same along with interest would be recovered from the manufacturer or the provider of the output service. If the aforesaid provision is read as a whole, we find no reason to read the word 'OR' in between the expression 'taken' or 'utilized wrongly' or 'has been erroneously refunded' as the word 'AND'. On the happening of any of the three aforesaid circumstances such credit becomes recoverable along with interest. Therefore the High Court erroneously held that interest cannot be claimed from the date of wrong availment of Cenvat credit, that they should be payable from the date when the Cenvat credit is wrongly utilized. Therefore the attempt on the High Court to read down the provision by way of substituting the word 'OR' by an 'AND' so as to give relief to the assessee is found to be erroneous.

18. In view of the aforesaid authoritative pronouncement of the Apex Court, the word 'OR' found in Rule 14 cannot be read as 'AND'. Further, once the credit is taken or utilized wrongly or has been erroneously refunded, such credit becomes recoverable along with interest. In fact, in the case before the Apex Court, the assessee received inputs and capital goods from various manufacturers/dealers and availed Cenvat credit on the duty paid on such materials. The Investigations conducted indicated that the assessee had taken Cenvat credit on fake invoices. When proceedings were initiated, the assessee filed applications for settlement of proceedings and the entire matter was placed before the Settlement Commission. The Settlement Commission held that a sum of Rs. 5,71,47,148-00 is the duty payable and simple interest at 10% on Cenvat credit wrongly availed from the date the duty became payable as per Section 11AB of the Act till the date of payment. The Revenue calculated the said interest up to the date of the appropriation of the deposited amount and not up to the date of payment. Therefore it was contended that interest has to be calculated from the date of actual utilization and not from the date of availment. Therefore, an application was filed for clarification by the assessee. The said application was rejected upholding the earlier order, i.e., interest is payable from the date of duty becoming payable as per Section 11AB. Therefore the Apex Court interfered with the judgment of the Punjab and Haryana High Court and rightly rejected by the Settlement Commission as outside the scope and they found fault with the interpretation placed on Rule 14.

20. From the aforesaid discussion what emerges is that the credit of excise duty in the register maintained for the said purpose is only a book entry. It might be utilised later for payment of excise duty on the excisable product. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. It matures when the excisable product is received from the factory and the stage for payment of excise duty is reached. Actually, the credit is taken, at the time of the removal of the excisable product. It is in the nature of a set off or an adjustment. The assessee uses the credit to make payment of excise duty on excisable product. Instead of paying excise duty, the cenvat credit is utilized, thereby it is adjusted or set off against the duty payable and a debit entry is made in the register. Therefore, this is a procedure whereby the manufacturers can utilise the credit to make payment of duty to discharge his liability. Before utilization of such credit, the entry has been reversed, it amounts to not taking credit. Reversal of cenvat credit amounts to non-taking of credit on the inputs.

21. Interest is compensatory in character, and is imposed on an assessee, who has withheld payment of any tax, as and when it is due and payable. The levy of interest is on the actual amount which is withheld and the extent of delay in paying tax on the due date. If there is no liability to pay tax, there is no liability to pay interest. Section 11AB of the Act is attracted only on delayed payment of duty i.e., where only duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person liable to pay duty, shall in addition to the duty is liable to pay interest. Section do not stipulate interest is payable from the date of book entry, showing entitlement of Cenvat credit. Interest cannot be claimed from the date of wrong availment of CENVAT credit and that the interest would be payable from the date CENVAT credit is taken or utilized wrongly.

> **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.
>
> **23.** Under these circumstances, we do not see any error committed by the Tribunal in passing the impugned order. *Accordingly, the substantial question of law framed is answered against the Revenue and in favour of the assessee.*

16. In the case of **Philips Carbon Black Ltd. Vs Commissioner of Central Excise, Bolpur - 2018 (12) TMI 853 - CESTAT,** the Kolkata Bench held as under:

> " 5. We find from the adjudication order that the appellant had taken credit but not utilized the same and reversed the same prior to the issuance of the show cause notice. The Adjudicating Authority following the Board's Circular dated 03.09.2009 observed that interest is payable even when credit has not been utilized. We find that the Larger Bench of the Tribunal in the case of J.K.Tyre & Industries Ltd. v. Asst. Commr. of C.Ex., Mysore [2016 (340) E.L.T. 393 (Tri.-LB)] held that wrong availment of Cenvat Credit, interest is not payable, if reversed before utilization. The Tribunal in the case of Garden Silk Mills Ltd. v. Commissioners of Central Excise, Customs & Service Tax- Surat-I [2015 SCC Online CESTAT 2361] on the identical issue held in favour of the assessee.
>
> 6. Hence, the demand of interest on unutilised Cenvat Credit, cannot be sustained. In the present case penalty was imposed for contravention of the Rules and the same is warranted.

17. This Bench in the case of **Steel Authority of India Ltd Vs CCE Durgapur, vide Final Order No.76363-76365/2025 dated 13.05.2025**, following the ratio of the above two case laws has held that no interest is required to be paid if sufficient balance is maintained in the Cenvat Credit register.

18. In view of the factual matrix along with the discussed statutory provisions, the amendments thereto, the legislative intent as well as the cited case laws, we hold that the appellant is not required to pay the interest of Rs.2,44,031 as the appellant all along maintained a higher positive balance in their credit account and as clearly brought out in paras 13 & 14 above. Accordingly, we set aside the confirmed interest demand in the impugned order.

19. Coming to the penalty imposed under Section 11 AC, we find that the cenvat credit has been taken in 2010-11 and has also been reversed by way of proper invoices in the same year. It is not a case, where this transaction was discovered by the Revenue and thereafter the appellant has reversed the credit. The taking of credit and reversal of the same both have happened in the normal course. The inward and outward transactions have been properly reflected in the Invoices and ER 1Returns. Therefore, no case of suppression has been made out by

the Revenue. When the suppression clause does not stand proved by the Revenue, the penalty under Section 11AC also does not legally sustain. Accordingly, we set aside the penalty.

20. In view of the foregoing, we set aside the interest and penalty imposed on the appellant and allows the appeal to this extent. The appropriation of already reversed Cenvat Credit by the Revenue is held as proper. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar