IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 75382 of 2016

(Arising out of Order-in-Original No. 18-19/Commissioner/CE/Kol-IV/2015 dated 31.12.2015 passed by the Commissioner of Central Excise, Kolkata-IV Commissionerate, M.S. Building, 15/1, Strand Road, Kolkata – 700 001)

M/s. ITC Limited **: Appellant**
Paperboards and Specialty Papers Division, Unit: Tribeni,
P.O.: Chandrahati, District: Hooghly, PIN – 712 504

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road,
Kolkata – 700 001

AND

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Mr. Sanjay Chowdhury, **: Appellant**
M/s. ITC Limited
Paperboards and Specialty Papers Division, Unit: Tribeni,
P.O.: Chandrahati, District: Hooghly, PIN – 712 504

VERSUS

Commissioner of Central Excise **: Respondent**
Kolkata-IV Commissionerate,
M.S. Building, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri J.P. Khaitan, Senior Advocate,
Shri Agnibesh Sengupta, Advocate,
Shri Indranil Banerjee, Advocate,
For the Appellant(s)

Shri Debapriya Sue, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 77650-77651 / 2025

DATE OF HEARING / DECISION: 06.11.2025

ORDER: [PER SHRI R. MURALIDHAR]

The appellant-company has paid the excise duty by utilizing CENVAT Credit and also by way of cash payment. In the course of their transactions pertaining to the following 13 months, the CENVAT Credit was debited in a delayed way, as indicated in the following table: -

Sl. No.	Month	Total credit available on the last date of the month in respect of which the credit was utilised (in Rs.)	Amount of CENVAT Credit utilised (in Rs.)	Date of formal debit	No. of days delay, as alleged in the Show Cause Notice
1	April 2010	3194245	2045223	06.05.2010	1
2	June 2010	4327910	3764491	06.07.2010	1
3	July 2010	3021656	2036567	06.08.2010	1
4	August 2010	11596758	4044214	06.09.2010	1
5	November 2010	15955529	8947500	06.12.2010	1
6	December 2010	37451181	12594533	06.01.2011	1
7	February 2011	25868963	9473934	10.03.2011	5
8	April 2011	21773825	14628022	12.05.2011	7
9	June 2011	23310229	14829155	21.07.2011	16
10	July 2011	16139701	14009585	06.08.2011	1
11	August 2011	18393168	12376967	06.09.2011	1
12	September 2011	14624988	8997472	06.10.2011	1
13	November 2012	25729560	18211262	06.12.2012	1

2. On the ground that the appellant had failed to discharge their excise duty liability for the month and considering that the CENVAT debited is not a duty paid at all, a Show Cause Notice was issued, proposing to demand the entire amount, along with interest and penalties. The said Show Cause Notice also proposed to confiscate the goods cleared during the period in question.

2.1. The appellants filed their detailed reply and submitted that the delay was not intentional and that a mere few days of delay cannot be taken to be a ground for demanding the entire debited CENVAT Credit as excise duty once again.

2.2. After due process, the ld. adjudicating authority has confirmed the demand, along with interest and penalty. He has also imposed a penalty on Mr. Sanjay Chowdhury, Finance Head of the appellant-company. The ld. adjudicating authority has held that the goods were liable to be confiscated, but the same were not confiscated since the same were not available for confiscation.

3. Being aggrieved, the appellants are before the Tribunal.

4. The Ld. Counsel appearing on behalf of the appellants submits that the table reproduced above clearly shows that the delay was either for 1 day or a maximum of 16 days in a month. He states that it is not the case of the Department that the CENVAT Credit was not available with the appellant-company or that the CENVAT Credit was not in their closing balance as on the last date of the previous month; in such a case, debiting the CENVAT Credit in a delayed way by a few days cannot be taken as non-payment of excise duty towards the extent of CENVAT Credit debited.

4.1. He further submits that since they were carrying more than enough balance in their CENVAT Credit books, they were not required to pay any interest; however, the appellant have paid interest amounting to Rs.2,33,784/-, which is already recorded in the Show Cause Notice and the Order-in-Original.

4.2. In view of the above submissions, he prays that the appeals may be allowed.

5. The Ld. Authorized Representative of the Revenue submits that factually, it is on record that the appellant was debiting their CENVAT Account after the due date, i.e., after 5th of every month. Therefore, he contends that this amounts to non-payment of duty for the particular month. Accordingly, he justifies the confirmed demand, interest and penalties, as confirmed in the impugned order.

6. Heard both sides, perused the appeal papers and other submissions made before us.

7. We find that the issue is in a very short compass. Admittedly, there is no dispute that the appellant-company was carrying the CENVAT Credit as balance as on the last date of the previous month. However, while debiting the same towards the payment of excise duty liability for that particular month, they delayed the payment. From the table reproduced above, it can be seen that in respect 10 out of 13 entries, there was a delay of 1 day while in respect of the other 3 entries, the delay was between 5 to 16 days.

7.1. In such a case, the delayed payment would only require them to pay the interest. We take note of the fact that even the interest has been paid by the appellant, which stands recorded in the Show Cause Notice and the Order-in-Original.

8. In view of the above, we do not see any justification in making out a huge case out of literally no contravention resulting in a revenue loss, by demanding more than Rs.12.59 crore when the Department clearly knew that they had absolutely no

case to demand the said amount, since the CENVAT has actually been debited. This kind of frivolous litigation wastes the precious time of the assessee, the Authorized Representative of the Revenue and the Tribunal, which could have been easily avoided.

9. We have no hesitation in setting aside the impugned order in toto and allowing the appeals filed by the appellants. The appellants would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd