IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/87115/2017

[Arising out of Order-in-Appeal No: PUN-SVTAX-000-APP-064-17-18 dated 16th June 2017passed by the Commissioner of Service Tax (Appeals), Pune.]

Jakraya Sugar Ltd …***Appellant***

versus

Commissioner of Service Tax
Pune ***…Respondent***

<u>Appearance</u>:

Shri Deepak Marne, Cost Accountant for appellant

Shri VR Reddy, Assistant Commissioner (AR) for the respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**04/12/2017**
Date of decision:	**04/12/2017**

ORDER NO: ____________________________

The short point in this appeal is limited to the penalty that has been imposed on the appellant, M/s Jakraya Sugar Ltd, under rule 15(2) of CENVAT Credit Rules, 2004 which has been upheld by Commissioner of Service Tax (Appeals), Pune in impugned order-in-appeal no. PUN-SVTAX-000-APP-064-17-18 dated 16th June 2017.

2. Appellant had allegedly availed credit of tax paid on construction service utilised for setting up their factory and, upon ineligibility being pointed out, reversed credit of ₹16,95,937/- and paid interest thereon. Subsequently, a show cause notice was issued to them in which this amount was appropriated and penalty of like amount was imposed on them under rule 15(2) of the CENVAT Credit Rules, 2004 read with section 11AC of Central Excise Act, 1944.

3. Heard the Representative of the appellant and the Authorised Representative for Revenue.

4. It is the contention of Learned Authorised Representative that had it not been for the audit scrutiny, the reversal of CENVAT credit would not have occurred and, hence, was not voluntary. On the submission of the appellant that section 11A(2) should have been invoked in their case, it is seen that, in the facts and circumstances of the case, this is tenable. Appellant had discharged its obligation by reversing CENVAT credit that had been wrongly availed and made good. No evidence of any deliberate attempt to evade duty has been brought on record.

5. For the above reason the initiation of proceedings under section

11A and 11AC of Central Excise Act, 1944 does not appear to be justified. The impugned order is set aside to the extent of penalty that has been imposed on the appellant.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

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