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

**COURT No. I**

**Appeal No. E/87661/17**

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-255/2017-18 dated 10.08.2017 passed by Commissioner of Central Tax (Appeals), Pune I)

**Thermax Ltd.** **Appellant**
Vs.

**Commissioner of Central Excise** **Respondent**
**Pune I**

Appearance:

Ms. Anjali Hirawat, Advocate for appellant
Shri H.M. Dixit, Asst. Commr (AR) for respondent

**CORAM:**

**Hon'ble Mr. M.V. Ravindran, Member (Judicial)**

Date of Hearing & Decision: 15.03.2018

FINAL ORDER NO A/86175/2018

**Per: M.V. Ravindran**

This appeal is directed against order-in-appeal No. PUN-EXCUS-001-APP-255/2017-18 dated 10.08.2017.

2. Heard both sides and perused the records.

3. On perusal of the records, it transpires that the issue is regarding excess availment of CENVAT credit during the period June 2012 to May 2013. Records of the appellants were

audited by the authorities. It was noticed that there was availment of excess CENVAT credit by the appellant in form of transfer of an amount from basic customs duty to Education Cess/Secondary & Higher Education Cess without debiting the same in BED account. On being pointed out, the argument of the appellant before the lower authorities as well as before the Tribunal was that they had sufficient balance in BED account and they have debited the amount in their accounts but failed to inform Revenue authorities by showing the debit of amount in CENVAT account. It is the submission of the appellant that they had subsequently debited the said amount in Cenvat account. Show-cause notice was issued for demand of interest and imposition of penalties on the appellant and for appropriation of amount debited by them. Both the authorities have confirmed and appropriated amount debited and demanded interest and imposed penalties.

4. Learned Counsel submits that they are contesting the demand for interest and penalties. It is her submission that no interest is payable as they had sufficient balance in their BED account and it was only a clerical error in non-debiting the amount in basic excise duty account. It is her submission that it has not resulted in any loss to the Government exchequer. On penalty, it is her submission that penalty has been imposed under the provisions of Rule 15(2) of the Cenvat Credit Rules,

2004 read with section 11AC of the Central Excise Act, 1944 by the adjudicating authority. It is her submission that the first appellate authority has confirmed the penalty imposed under section 11AC of the Central Excise Act, 1944 which is not applicable in the case in hand.

5. Learned D.R. reiterates the finding of the lower authorities and submits that the appellant had paid Education Cess/Secondary & Higher Education Cess without debiting the amount in basic excise duty which is in itself contravention of the provisions of Central Excise Acts and Rules made there under; penalty has been correctly imposed as this was noticed by the department and brought to the light after conducting audit, interest liability arises as Education Cess/Secondary & Higher Education Cess has been paid though there being no credit in the said account.

6. On careful consideration of the submissions made by both sides, I find that the argument of the learned Counsel as to interest liability does not arise is devoid of merits. It transpires from the records that Education Cess/Secondary & Higher Education Cess were debited as paid without an amount in credit in respect of two cess, inasmuch as transfer of credit from basic excise duty to Education Cess/Secondary & Higher Education Cess is not complete unless there is debit in the BED account.

Undisputedly, the appellant had not debited the BED with an amount which has been used for payment of Education Cess/Secondary & Higher Education Cess. In view of this, the interest liability has been correctly imposed on the appellant. To that extent, I hold the impugned order is correct and does not require any inference as also the confirmation of the demand raised.

6.1 As regards penalty, I find that there is merits in the arguments put forth by the learned Counsel.

6.2 It is seen from the records that the appellant had enough balance in basic excise duty; transfer of an amount from the basic excise duty to education cess is permitted as per Act and Rules made thereunder, the non-debiting in BED account can be attributed to human error which was subsequently rectified, on being pointed out. In my considered view, this act of non-debiting the basic excise duty would not attract stringent imposition of equal penalty under section 11AC or under rule 15(2) of Cenvat Credit Rules, 2004 inasmuch that there is no intention to evade duty and the clearances of the goods were effected by showing debit in Education Cess/Secondary & Higher Education Cess account. In view of these finding, I hold that there is no warrant to visit the appellant with penalties under any provisions of Central Excise Act and the Rules made there under. Penalty imposed is set aside.

7. Appeal stand disposed of as indicated herein above.

(operative part of order pronounced in Court)

**(M.V. Ravindran)**
**Member (Judicial)**

*nsk*