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

**COURT No. I**

**Appeal No. E/86096/14**

**Prima Pvt Ltd.** **Appellant**

Vs.

**Commissioner of Central Excise Pune III** **Respondent**

**Appeal No. E/86054/14**

**Commissioner of Central Excise Pune III** **Appellant**

v.

**Prima Pvt Ltd.** **Respondent**

(Arising out of Order-in-Appeal No. PUN-EXCUS-003-APP-340-13-14 dated 27.12.2013 passed by Commissioner of Central Excise (Appeals), Pune I)

Appearance:

Shri Arun Jain, Advocate for appellant
Shri S. Hasijja, Supdt. (AR) for respondent

**CORAM:**

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

Date of Hearing & Decision: 21.12.2017

FINAL ORDER NO. A/92297-92298/2017

**Per: M.V. Ravindran**

Revenue as well as the assessee are in appeals against the said impugned order. Hence by a common order, both the appeals are disposed of.

2. Relevant facts that arise for consideration, after filtering out unnecessary details, appellant-assessee during the period in question i.e. May 2007 to March 2009 had availed CENVAT Credit of various items and capital goods which was sought to be denied to them by the authorities. During the pendency of proceeding, appellant-assessee herein reversed CENVAT Credit which according to them were ineligible along with interest. Show-cause notice was issued for reversal of such CENVAT Credit availed along with interest and for imposition of penalties. The show-cause notice was contested on merits as well as on limitation; appellant-assessee had conceded the demand raised on CENVAT Credit on capital goods and inputs for an amount of Rs.33,46,191/- and Rs.1,04,428/- for the period May 2007 to December, 2008. The said demands were reversed by the appellant in December, 2008, January 2009, March 09 and the contest was only for interest liability and penalties. Appellant-assessee contested the show-cause notice for denial of CENVAT

Credit on GTA services. Limitation angle was also argued by the assessee before adjudicating authority. The adjudicating authority after following due process of law, confirmed the entire demand with interest and imposed equivalent amount of penalty. On an appeal, first appellate authority has upheld the demand of tax liability with interest but reduced the penalty amount not paid by the assessee. Revenue is in appeal for non-imposition of penalty on the confirmed demand while assessee is in appeal against the demand of interest and confirmation of demand on CENVAT Credit availed on overhead cranes and service tax paid on GTA services and penalty on other items.

3. Heard both sides and perused records.

4. On perusal of records, I find that the assessee-appellant is not contesting the tax liability/reversal of CENVAT Credit for an amount of Rs.1,04,428/- which was reversed by them and intimated to the departmental authorities. They are contesting the demand of interest and penalty on Rs.1,04,428/- I find that as regard the interest liability on both the amounts, the same arises. It is undisputed by the assessee before the lower authorities that they had availed CENVAT Credit on these two amounts which were not due to them and nothing was brought on record to show that they had not utilized the said CENVAT Credit during the period in question. In my view, the demand

of interest by the adjudicating authority which has been upheld by first appellate authority, in the facts and circumstances of this case seems to be correct and the impugned order to that extent is upheld.

4.1 In the case of demand of Rs.33,46,191/- in respect of interest on the said amount for availing CENVAT Credit which was reversed by the assessee-appellant in December 2008 and by a letter dated 28.01.2009 was intimated to the authorities. Despite such letter of 28.01.2009, for demand of CENVAT Credit of Rs.33,46,191/- raised by show-cause notice dated 11.04.2012. I agree with the contention of learned C.A. that if assessee-appellant have contested the reversal of Rs.33,46,191/- on limitation, they would have succeeded. I find that the argument on limitation for seeking setting aside the interest and penalty is an accepted proposition, as per the decision of the Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise & Cus., Vadodara-II v. Gujarat Narmada Fertilizers Co. Ltd. in Tax appeal No. 56 of 2011 decided on 20.01.2012. Respectfully following the same, I hold that the interest demanded and confirmed by the lower authorities on an amount of Rs.33,46,191/- is incorrect and not sustainable. Accordingly, the interest liability of Rs.33,46,191/- and the penalty which is sought to be imposed by Revenue in their appeal is unsustainable. Impugned order is modified to that extent of demand of interest and upheld to that extent of non-imposition of penalties.

4.2 As regard CENVAT Credit on overhead cranes of Rs.3,04,642/- during the period May 2007 to December 2008, I find that appellant-assessee had produced Chartered Engineer's certificate annexed to the appeal memo at page No.53 wherein the Chartered Engineer has clearly certified that the overhead cranes of different lifting capacity were installed in the factory premises for conveyance of heavy material, are essential capital asset in any manufacturing unit, got fabricated by assessee at the work site by procurement of requisite material (as per list attached and installed at different sheds). This certificate is not contested in their appeal nor was discarded as incorrect. In sum, it would mean that the inputs like M.S.Angles, channels, bars, concrete mixer etc. are eligible inputs for availment of CENVAT Credit. On these findings, I set aside the demand of an amount of Rs.3,04,642/-. Consequently, the interest liability and penalty imposed is also set aside.

4.3 As regard reversal of CENVAT Credit on GTA services for an amount of Rs.2,71,889/- availed during the period June 2008 to March 2009, I find that the issue needs reconsideration by the adjudicating authority as it is the claim of the appellant-assessee before Tribunal as was also before the lower authorities that the said services were utilized for “inward presentation of raw materials”. I find that both the lower authorities have not considered this submission and confirmed the demands without any reasoning on the plea raised by appellant-assessee. In my considered view, if appellant is able to justify that the GTA services were used for transportation of any raw material, they are eligible to avail CENVAT Credit. On this point, since this issue needs to be appreciated on factual matrix, impugned order to that extent is modified and remanded back to the adjudicating authority. Since the issue can be of interpretation, there is no reason to visit the appellant with penalty.

4.4 On merits, the appeal filed by appellant-assessee is disposed of as indicated herein above. Consequently, the appeal being only for non-imposition of penalty on an amount of Rs. 33,46,191/-, Revenue’s appeal stand rejected.

5. Appeals are disposed of as indicated herein above.

(operative portion pronounced in Court)

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

*nsk*