IN THE CUSTOMS, EXCISE AND SERVECE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI
COURT NO. I

APPLICATION NO. E/COD/85722/2018
E/CROSS/85724/2018
APPEAL NO. E/85714/2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-839/2017-18 dated 07.12.2017 passed by the Commissioner of Central Tax (Appeals-I), Pune.)

CCE & ST, Pune-I **Appellant**

Vs.

Demag Cranes and Components India P. Ltd. **Respondent**

Appearance:

Shri S.J. Sahu, Assistant Commissioner (AR) for Appellant
Shri Prasad J. Tendulkar, Advocate for Respondent

CORAM:

HON'BLE SHRI S K MOHANTY, MEMBER (JUDICIAL)

Date of Hearing: 26.07.2018
Date of Decision: 26.07.2018

ORDER NO. A/87013/2018

Per: S K Mohanty

Heard both sides and perused the case records.

2. Revenue has assailed the impugned order on the ground that setting aside the penalty imposed under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 by the Commissioner (Appeals) is not proper and justified. The respondent-assessee also filed cross appeal, with the prayer for

condonation of delay of 6 days. It has been contended by respondent that it had sufficient balance in its CENVAT account during the disputed period and thus, interest demand for delayed reversal of CENVAT credit cannot be sustained in terms of Rule 14 of the CENVAT Credit Rules, 2004.

3. Since delay in filing the cross appeal is very negligible and the reason explained seems reasonable, I am condoning the delay in late filing of the cross appeal. Both the appeal of Revenue as well as cross appeal of respondent are taken up for hearing together and a common order is being passed.

4. I find that for setting aside the penalty imposed in the adjudication order, the Learned Commissioner (Appeals) has relied upon the judgment of Hon'ble Punjab & Haryana High Court in the case of *CCE Ludhiana Vs. Sangrur Agro Ltd. – 2010 (254) ELT 25 (P&H).* It has been ruled by the Hon'ble High Court that Section 11AC of the Central Excise Act, 1944 will not have any application, in case of reversal of excess availed CENVAT credit, in terms of Rule 6(3)(b) of the CENVAT Credit Rules. Since operation of the said judgment of Hon'ble Punjab & Haryana High Court has not been stayed or overruled by the Hon'ble Apex Court, the ratio of the said judgment has the binding effect on the Tribunal and thus, I cannot take a contrary stand to decide the issue differently regarding imposition of penalty. Therefore, the impugned order stands, so far as it dropped the penalty imposed on the respondent.

5. In so far as demand of interest for delayed reversal of CENVAT credit, I find that the Hon'ble Bombay High Court in the case of *Commissioner of Central Excise, Pune-I Vs. GL & V India Pvt. Ltd. – 2015 (321) ELT 611 (Bom.),* by relying on the judgment of Hon'ble Supreme Court in the case of *Union of India Vs. Ind-Swift Laboratories Ltd. – 2011 (265) ELT 3 (SC)* have ruled that under the amendment provisions of Rule 14 of the CENVAT Credit Rules, 2004, the respondent-assessee is liable to pay interest, even when it had sufficient balance in the books of accounts. Since the judgment in the case of *GL & V India Pvt. Ltd. (supra)* has been delivered by the Hon'ble Bombay High Court, having territorial jurisdiction over this Bench of the Tribunal, respectfully following such judgment, I conclude that interest demand confirmed by the authorities below on the respondent is proper and justified. Therefore cross appeal filed by the respondent is liable for dismissal.

5. In view of above discussions, the appeal filed by Revenue is dismissed. The cross appeal filed by the respondent is also dismissed.

(*Dictated & pronounced in open Court*)

(S K Mohanty)
Member (Judicial)

Prasad