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

APPEAL NO: E/85044/2018

[Arising out of Order-in-Appeal No: PUN-EXCUS-001-APP-394/2017-18 dated 5th October 2017 passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Yapp India Automotive Systems Pvt Ltd …*Appellant*

versus

Commissioner of Central Excise
Pune - II ***…Respondent***

Appearance:

Shri Sanandan Khairnar, Advocate for appellant

Shri D S Chauhan, Superintendent (AR) for respondent

CORAM:

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

Date of hearing:	**12/04/2018**
Date of decision:	**12/04/2018**

ORDER NO: A/86178 / 2018

Dispute pertains to imposition of penalty in consequence of confirmation of recovery of CENVAT credit of ₹ 24,73,498/- which had been availed by M/s Yapp India Automotive Systems Pvt Ltd between March 2013 and March 2014. While the original authority confirmed the demand as proposed in the show cause notice along with consequent detriment, Commissioner of Central Excise (Appeals), Pune – II *vide* order-in-appeal no. PUN-EXCUS-001-APP-394/2017-18 dated 5th October 2017 reduced the recovery to the disputed amount and, while confirming the interest liability, upheld penalty to the extent of recovery.

2. According to Learned Counsel for appellant, the recovery of CENVAT credit is not in dispute and that the amendment in rule 14 of CENVAT Credit Rules, with effect from 17th March 2012, liability to interest would arise only on utilization of CENVAT credit that had been wrongly availed. According to him, though this submission had been made before the lower authorities, it was not considered and adverse finding was rendered. On the issue of penalty, it is his submission that they had availed CENVAT credit owing to a clerical error and had reversed the amount immediately upon excess availment being pointed out during audit. He submits that they had been filing returns regularly and relied upon the decision of the Tribunal in *Accurate Chemicals Industries v. Commissioner of Central Excise, Noida [2014 (300) ELT 451(Tribunal-Del.)]* to contend that the onus is on the tax authorities to scrutinize and ascertain any wrongful availment that the concerned officer is empowered to call for documents from the assessee wherever necessary for scrutiny and that

extended period cannot be invoked in such case. Accordingly, the claims that the ingredients required for invoking the penal provisions in section 11AC of Central Excise Act, 1944 does not exist. Further more, it is his contention that the show cause notice is bereft of any allegation to that effect.

3. According to Learned Authorised Representative, section 11A(5) of Central Excise Act, 1944, requires discharge of duty and interest liability which should prevail over rule 14 of CENVAT Credit Rules, 2004. On the issue of penalty, it is his contention that the appellant had reversed the CENVAT credit only upon being pointed out by the audit and the availment would otherwise have gone unnoticed. Reliance is placed on the decision of the Tribunal in *Balmer and Lawrie Co Ltd v. Commissioner of Central Excise, Belapur [2014 (301) ELT 573 (Tri Mumbai)]* to contend that mere filing of returns would not suffice to escape the penal provisions as intention not to suppress is not evident from filing of returns, etc. He relies upon the decision of the Hon'ble High Court of Chattisgarh in *Commissioner if Central Excise & Customs, Raipur v. Vandana Vidyut Ltd [2016 (331) ELT 231 (Chatt.)]* on the application of interest liability.

4. Having heard the rival submissions, the present dispute is

limited to the liability for interest and imposition of penalty. The decisions relied upon by the Learned Authorised Representative relates to the period prior to the amendment to rule 14 of the CENVAT Credit Rules, 2004. The issue pertaining to interest can be decided on the provisions contained in rule 14 of CENVAT Credit Rules, 2004 which requires that CENVAT credit should have been taken and utilized for invoking the liability provisions under section 11AB of Central Excise Act, 1944. Reference to section 11A is limited to the extent that CENVAT credit was recoverable whereas, in the present instance CENVAT credit has been reversed and the interest liability would arise only on invoking section 11AA. Considering the legal position, interest liability does not arise.

5. On the challenge to imposition of penalty which is independent to rule 14 of CENVAT Credit Rules, 2004 and rule 15 for invoking the liability to penalty under section 11AC of Central Excise Act, 1944 the ingredients specifically mentioned therein must exist. From a perusal of the show cause notice, it is seen that there is no allegation to that effect. Neither have the lower authorities rendered a finding which evidences substantively that these elements do exist. Accordingly, imposition of penalty is also not sustainable.

6. For the above reason, the appeal is allowed and the impugned order is set aside.

(Dictated in Court)

(C J Mathew)
Member (Technical)

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