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

APPEAL NO: E/85602/2018

Arising out of: Order-in-Appeal No. PUN-EXCUS-001-APP-0720-2017-18 dated 28/11/2017

Passed by: Commissioner of Central Tax (Appeals – I), Pune.

	Appellant – Represented by:
Bridgestone India Pvt Ltd	Mr. R.S. Sharma, Advocate
versus	
Commissioner of Central Excise & Service Tax Pune – I	***Respondent – Represented by:*** Mr. S.J. Sahu, Asstt. Commissioner (A.R.)

Date of hearing	**25/06/2018**
Date of pronouncement	**12/10/2018**

CORAM

Hon'ble Shri S K Mohanty, Member (Judicial)

ORDER NO: A/87662 / 2018

Denial of CENVAT credit of service tax paid on taxable services, namely, rent-a-cab, workmen's compensation insurance, book binding and cricket ground preparation is the subject matter of present dispute.

2. The authorities below have confirmed the service tax demand

and also imposed penalty under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

3. The learned Advocate appearing for the appellant, at the outset, submits that the appellant is not contesting disallowance of CENVAT credit, which was subsequently reversed by the appellant. However, he contended that imposition of penalty is not sustainable inasmuch as the entire CENVAT credit, in question, was reversed prior to issuance of show cause notice and that there was no element of fraud, collusion, suppression of facts, etc., in availing such irregular credit. Thus, he pleaded for the benefit of Section 11A(2) of the Act for non issuance of show cause notice, only for imposition of penalty. It was further contended that in absence of fulfillment of the ingredients mentioned in Rule 15(2) of the Rules read with Section 11AC of the Act, the department is not justified in imposing penalty on the appellant. Learned Advocate has relied on the judgment of the Hon'ble Supreme Court in the case of *Union of India v. Rajasthan Spinning and Weaving Mills* [2009 (238) ELT 3 (SC)] to strengthen his stand that under the facts and circumstances of the case, no penalty shall be imposed on the appellant.

4. On the other hand, the Learned Authorised Representative appearing for Revenue reiterates the findings recorded in the impugned order. He relied upon the judgment of the Hon'ble Supreme

Court in the case of *Union of India v. Dharmendra Textile Processors* [2008 (231) ELT 3 (SC)] to justify his stand that mere reversal of CENVAT credit cannot absolve the assessee from its liability for payment of penalty imposed under Rule 15(2) read with Section 11AC *ibid.*

5. Heard both the sides and perused the records.

6. In this case, the appellant is not contesting denial of CENVAT credit and payment of interest as held by the authorities below. Thus, the issue involved in this appeal for consideration is, only for determination, whether under the circumstances of the case,, the provisions of the sub-rule (2) of Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11AC of the Act can be invoked, justifying imposition of penalty on the appellant.

7. Sub-rule (2) of Rule 15 of the Rules mandates that in case of wrong availment or utilisation of CENVAT credit, attributable to the reason of fraud, collusion or willful misstatement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder, with intent to evade payment of duty, then the manufacturer shall also be liable to pay penalty in terms of the provisions of Section 11AC of the Act. On a plain reading of both the provisions of Rule 15 of the Rules and Section 11AC of the Act, it transpires that onus entirely rest on Revenue to prove that the

ingredients mentioned therein are fulfilled for invocation of the penal provisions. On perusal of the case records, I do not find that the department had adduced any plausible evidence to sustain the charges leveled against the assessee. On the contrary, I find that the undisputed facts are that the availment of irregular CENVAT credit was disclosed by the appellant in the monthly ER-1 returns filed before the department and the credit so availed was not utilized for payment of Central Excise duty on removal of the final products. This fact is evident from the records of the appellant that it had huge balance of CENVAT credit at the time between taking of such irregular credit and subsequent reversal thereof. Thus, under the circumstances of the case, it cannot be said that taking of irregular CENVAT credit was due to fraudulent intent on the part of the appellant to defraud the Government revenue. Hence, I am of the considered view that imposition of penalty on the appellant cannot be sustained in the eyes of law.

8. The judgement of the Hon'ble Supreme Court in the case of *Rajasthan Spinning and Weaving Mills (supra)* relied upon by the learned Advocate supports the case of the appellant. It has been held that the penalties under Section 11AC is a punishment for an act of deliberate deception by the assessee, with the intent to evade duty by adopting any of the means mentioned in such statutory provision. The judgment of the Hon'ble Supreme Court in the case of *Dharmendra*

Textile Processors (supra) relied upon by the Learned Authorised Representative has also been discussed by the Hon'ble apex Court in the case of *Rajasthan Spinning and Weaving Mills (supra).* If the conditions enumerated in Section 11AC are fulfilled, then there is no discretion vested with the authorities to quantify the amount of penalty, which can be equal to the duty liability, which was confirmed on the appellant. Since the law is well settled with regard to imposition of penalty under Section 11AC of the Act, and in view of the fact that the ingredients provided thereunder are absent in the present case, no penalty shall be imposed on the appellant.

9. Therefore, the impugned order, so far as it upholds the imposition of penalty on the appellant, is set aside and the appeal is allowed to such extent, in favour of the appellant.

(Pronounced in Court on 12/10/2018)

(S K Mohanty)
Member (Judicial)

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