

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 87969 OF 2013

[Arising out of Order-in-Original No. 05/RN/COMNR/M-II/ 2013-14 dated 21st
June 2013 passed by the Commissioner of Central Excise, Mumbai – II.]

Hindustan Petroleum Corporation Ltd

Refinery Division

B D Patil Road, Mahul, Mumbai - 400074

... Appellant

versus

Commissioner of Central Excise

Mumbai – II

9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug

Parel, Mumbai - 400012

...Respondent

APPEARANCE:

Shri Siddhanth Sriram, Advocate and Ms Kiran Chavan, Advocate for the
appellant

Shri P K Acharya, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 87024 /2023

DATE OF HEARING:

22/06/2023

DATE OF DECISION:

18/10/2023

PER: C J MATHEW

Of the originally confirmed amount of ₹ 65,13,632/- in
proceedings initiated against M/s Hindustan Petroleum Corporation

Ltd, this appeal, against order¹ of Commissioner of Central Excise, Mumbai – II, is confined to resolution on the correctness of demand having been confirmed under rule 14 of CENVAT Credit Rules, 2004 and even after the reversal of credit of ₹ 1,56,461/- that is alleged to have been irregularly availed against invoices dated 3rd September, 2010 and 27th May 2010 and the correctness of disallowance of CENVAT credit on capital goods that, instead of being apportioned over two years, was taken in the very first year.

2. Learned Counsel for the appellant placed reliance on the decision of the Hon'ble High Court of Allahabad in *Hello Minerals Water (P) Ltd v. Union of India* [2004 (174) ELT 422 (All.)] and of the Hon'ble Supreme Court in *Chandrapur Magnet Wires (P) Ltd v. Collector of Central Excise, Nagpur* [1996 (81) ELT 3 (SC)]. It is also further contended that the decision of the Tribunal in *Rana Sugar Ltd v. Commissioner of Central Excise, Meerut –II* [2010 (249) ELT 247 (Tri.Del.)] was upheld by the Hon'ble High Court of Allahabad while dismissing the appeal of Revenue in *Commissioner of Central Excise, Meerut –II v. Rana Sugar Ltd* [2010 (253) ELT 366 (All.)] holding that with subsequent reversal of credit wrongly taken there was no scope for demanding interest and imposing penalty.

3. Insofar as the issue of premature availment of CENVAT credit

¹ [order-in-original no. 05/RN/COMNR/M-II/ 2013-14 dated 21st June 2013]

on capital goods is concerned, reliance was placed on the decision of the Tribunal in *Commissioner of Central Excise, Vadodara – II v. Interplex (India) Pvt Ltd* [2007 (6) STR 53 (Tri.-Ahmd)], in *Commissioner of Central Excise, Pune – I v. Panse Autocomp Pvt Ltd* [2008 (223) ELT 253 (Tri.-Mumbai)], in *Sunflag Filaments Ltd & Anr v. Commissioner of Central Excise, Vapi* [2009 (93) RLT 171 (CESTAT-Ahmd.)] and in *Everest Rolling Mills Pvt Ltd v. Commissioner of Central Excise, Jaipur* [2013 (292) ELT 397 (Tri.-Del.)].

4. We have heard Learned Authorised Representative.

5. We find that the issue of continuation of proceedings after reversal of wrongly availed credit not being tenable has been established time and again and that the Hon'ble High Court of Karnataka in *Commissioner of Central Excise & Service Tax, LTU, Bangalore v. Bill Forge Pvt Ltd* [2012 (279) ELT 209 (Kar.)] has held that

'21. Interest is compensatory in character, and is imposed on an assessee, who has withheld payment of any tax, as and when it is due and payable. The levy of interest is on the actual amount which is withheld and the extent of delay in paying tax on the due date. If there is no liability to pay tax, there is no liability to pay interest. Section 11AB of the Act is attracted only on delayed payment of duty i.e., where only duty of excise has not been levied or paid or has been short

levied or short paid or erroneously refunded, the person liable to pay duty, shall in addition to the duty is liable to pay interest. Section do not stipulate interest is payable from the date of book entry, showing entitlement of Cenvat credit. Interest cannot be claimed from the date of wrong availment of CENVAT credit and that the interest would be payable from the date CENVAT credit is taken or utilized wrongly.

22. In the instant case, the facts are not in dispute. The assessee had availed wrongly the Cenvat credit on capital goods. Before the credit was taken or utilized, the mistake was brought to its notice. The assessee accepted the mistake and immediately reversed the entry. Thus the assessee did not take the benefit of the wrong entry in the account books. As he had taken credit in a sum of Rs. 11,691-00, a sum of Rs. 154-00 was the interest payable from the date the duty was payable, which they promptly paid. The claim of the Revenue was, though the assessee has not taken or utilized this Cenvat credit, because they admitted the mistake, the assessee is liable to pay interest from the date the entry was made in the register showing the availment of credit. According to the Revenue, once tax is paid on input or input service or service rendered and a corresponding entry is made in the account books of the assessee, it amounts to taking the benefit of Cenvat credit. Therefore interest is payable from that date, though, in fact by such entry the Revenue is not put to any loss at all. When once the wrong entry was pointed out, being convinced, the assessee has promptly reversed the entry. In other words, he did not take the advantage of wrong entry. He did not take the Cenvat credit or utilized the Cenvat Credit. It is in those circumstances the Tribunal was justified in holding that when the assessee has not taken the benefit of the Cenvat credit, there is no liability to pay interest. Before it can be taken, it had been reversed. In other words, once the entry

was reversed, it is as if that the Cenvat credit was not available. Therefore, the said judgment of the Apex Court has no application to the facts of this case. It is only when the assessee had taken the credit, in other words by taking such credit, if he had not paid the duty which is legally due to the Government, the Government would have sustained loss to that extent. Then the liability to pay interest from the date the amount became due arises under Section 11AB, in order to compensate the Government which was deprived of the duty on the date it became due. Without the liability to pay duty, the liability to pay interest would not arise. The liability to pay interest would arise only when the duty is not paid on the due date. If duty is not payable, the liability to pay interest would not arise.'

6. Furthermore, reversal of credit sufficing to relieve the assessee from detriment thereafter was also confirmed by the Hon'ble Supreme Court in *re Chandrapur Magnet Wires (P) Ltd* and by the Hon'ble High Court of Allahabad in *re Hello Minerals Water (P) Ltd*.

7. Turning to the issue of premature availment of CENVAT credit and the consequence thereof, the decision of the Tribunal in *re Sunflag Filaments Ltd* holding that

'4. I have considered the rival submissions. The capital goods have been transferred from Unit-I to Unit-II without reversing the credit but there is no dispute that the credit is available to Unit-II also. If the credit was to be reversed, the Unit-II would have taken the same then and there. Therefore omission can at best said to be procedural and consequences can be imposition of penalty but there is no case for demand

of duty. Appellants can reverse the credit and take it in Unit-II and regularize the transaction if not already done. I find that the decisions cited by the Id. Advocate are applicable to the present case also. As regards the issue No. 3 wherein Unit-III had taken credit on some additional inputs for the manufacture of materials received for job work, the decision of the Larger Bench cited by the Id. Advocate is applicable and accordingly the credit taken by Unit-III has to be held to have been taken properly. In view of the above discussion issue Nos. 1 and 3 have to go in favour of the appellants.

5. As regards issue No. 2, the Id. Advocate fairly conceded that it was an omission. However, I do not find that the credit was taken on 9-1-2001 and balance credit would have been available to the appellants in the month of April. Therefore, it was incorrect on the part of the lower authorities to demand the full amount of duty. What should have been demanded was the interest for the period during which irregular credit was available with the appellants i.e. interest on Rs. 17,676/- from January to April and since there is no duty demand, penalty could not have been imposed under Section 11AC. It is nobody's case that the credit would not be admissible. It is only a question of date on which it was admissible. Accordingly, the matter has to be remanded to the Original Adjudicating Authority to work out the actual amount payable as interest on the irregular credit for the period during which the irregular credit remained with the appellants. In view of the discussion above, penalties imposed under Section 11AC on the appellants are set aside.'

would make it appear that the recovery proceedings under section 14 of CENVAT Credit Rules, 2004 would not sustain.

8. Nonetheless, owing to premature availment of credit, interest liability may arise in accordance with the decisions cited *supra*. Furthermore, it is on record that the original authority, while confirming the recoveries proposed in the show cause notice, had also made it a point to note that the reversal of credit has not been verified. Therefore, all that remains in this dispute is ascertainment of the reversal of CENVAT credit as well as computation of interest liability for premature availment of credit on capital goods that were procured. In order to enable this verification, the impugned order merit setting aside for matter to be remanded to the original authority for those limited purposes.

9. Appeal is accordingly disposed off.

(Order pronounced in the open court on 18/10/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)