**(2021) 08 CESTAT CK 0038**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Central Excise Appeal No. 22431 Of 2015

BEML Ltd. APPELLANT

Vs

Commissioner Of Central Excise, Customs And Service Tax, Bangalore-LTU RESPONDENT

**Date of Decision :** 03-08-2021

**Acts Referred:**
Central Excise Tariff Act, 1985 — Chapter 84, 87
Cenvat Credit Rules, 2004 — Rule 14, 15(2)

**Citation :** (2021) 08 CESTAT CK 0038

**Hon'ble Judges :** S.S. Garg, J

**Bench :** Single Bench

**Advocate :** Sudeshna Banerjee, K.B. Nanaiah

**Final Decision :** Allowed

## Judgement

1. The present appeal is directed against the impugned order dated 30/01/2015 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant. Briefly the facts of the present case are that the appellants are engaged in the manufacture of excisable goods classifiable under Chapter 84 & 87 of the First Schedule of the Central Excise Tariff Act, 1985 and are availing the facility of cenvat credit as per Cenvat Credit Rules, 2004.

2. During the course of audit of the records of the appellant by the Internal Audit Party, it was noticed that the goods they had sent for job work from their factory during the months of May 2007 and June 2007 were not received back into the factory for further manufacture, within the stipulated period of 180 days and they failed to reverse the cenvat credit of Rs. 38,87,316/- (Rupees Thirty Eight Lakhs Eighty Seven Thousand Three Hundred and Sixteen only) involved on such inputs. On this being pointed out by the Audit, the appellant reversed the relevant credit of Rs. 38,87,316/- (Rupees Thirty Eight Lakhs Eighty Seven Thousand Three Hundred and Sixteen only) but failed to pay the interest in terms of Rule 14 of the Cenvat Credit Rules, 2004. On these allegations, a show-

 

cause notice proposing to demand the irregularly availed cenvat credit along with interest under Rule 14 and also to impose penalty under Rule 15(2) read with Section 11AC was issued to the appellant and after following the due process, the original authority confirmed the demand of irregular cenvat credit along with interest and also imposed penalty. Aggrieved by the same, the appellant filed appeal before the Commissioner (Appeals) who rejected the appeal. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned counsel appearing for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedent. She further submitted that the appellants have reversed the cenvat credit of Rs. 18,13,932/- (Rupees Eighteen Lakhs Thirteen Thousand Nine Hundred and Thirty Two only) in December 2007 and Rs. 20,73,284/- (Rupees Twenty Lakhs Seventy Three Thousand Two Hundred and Eighty Four only) in January 2008 [totaling to Rs. 38,87,316/- (Rupees Thirty Eight Lakhs Eighty Seven Thousand Three Hundred and Sixteen only)] prior to utilization and prior to issuance of show-cause notice. She further submitted that the appellant is not liable to pay interest in cases where the cenvat credit wrongly availed is reversed prior to its utilization. This stand of the appellant has been confirmed by the subsequent amendment to Rule 14 of the Cenvat Credit Rules, 2004 w.e.f. 01/04/2012. She further submitted that this issue is no more res integra and has been settled in favour of the assessee by the decision of the Karnataka High Court in the case of Commissioner of C. Ex. & S.T., LTU, Bangalore V. Bill Forge Pvt. Ltd. reported in 2012 (279) E.L.T. 209 (Kar.) She also placed reliance on the decision of the Hon'ble Madras High Court in the case of Commissioner of C. Ex., Madurai V. Strategic Engineering (P) Ltd. reported in 2014 (310) E.L.T. 509 (Mad.) and JK Tyre & Industries Ltd. V. Assistant Commissioner of Central Excise - 2016-TIOL-1781-CESTAT-BANG-LB wherein following the decision of M/s. Bill Forge it was held that interest and penalty is not imposable where credit wrongly availed has been reversed prior to utilization. She also submitted that CESTAT, Bangalore in the appellant's own case by following the decision of Bill Forge, Strategic Engineering and JK Tye & Industries Ltd. has consistently set aside the demand of interest and imposition of penalty in the following cases:

? M/s. BEML Ltd. V. CCE, Bangalore-I vide Final Order No. 20865/2017 dated 10.04.2017

? M/s. BEML Ltd. V. CCE, Bangalore-I - 2016-TIOL-3157-CESTAT-BANG.

? M/s. BEML Ltd. V. CCE, Bangalore-I vide Final Order No. 21405-06/2015 dated 29.05.2015

? M/s. BEML Ltd. V. CCE, Bangalore-I 2015-TIOL-2566-CESTAT-BANG.

? M/s. BEML Ltd. V. CCE, Bangalore-I - 2015-TIOL-2802-CESTAT-BANG.

 

4.1. She also submitted that there was no malafide intention on the part of the appellant and the appellant immediately reversed the credit based on the objection raised by the Department. She also submitted that the entire demand is time-barred and extended period of limitation could not have been invoked since the entire demand is based on audit objection and for this submission, she relied upon the decision of the Apex Court in the case of CCE V. Essel Propack Ltd.- 2015 (323) E.L.T. 248 (SC) wherein the Apex Court has held that when demand is based on audit objections, suppression cannot be alleged. She also submitted that malafide intention cannot be alleged against the appellant who is a Public Sector Undertaking. For this, she relied upon the following decisions:

? M/s. BEML Ltd. V. CCE, Bangalore-I vide Final Order No. 21400/2017 dated 01.08.2017

? Indian Oil Corporation Ltd. V. CCE - 2013 (291) E.L.T. 449 (Tri.-Ahm.)

? UP State Sugar & Cane Development Corporation Ltd. V. CCE - 2009 (242) E.L.T. 260 (Tri.-Del.)

5. On the other hand, the learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and on perusal of the material on record, I find that it is undisputed that the appellant has reversed the entire cenvat credit of Rs. 38,87,316/-(Rupees Thirty Eight Lakhs Eighty Seven Thousand Three Hundred and Sixteen only) prior to its utilization and prior to the issuance of show-cause notice. Further I find that as soon as the audit raised the objection, the appellant who is a Public Sector Undertaking has reversed the cenvat credit prior to its utilization. This issue is no more res integra and has been settled by the Karnataka High Court in the case of Commissioner of C. Ex & S.T., LTU, Bangalore V. Bill Forge Pvt. Ltd. cited supra and thereafter consistently being followed by the Tribunal in the case of J.K. Tyre & Industries Ltd. - Larger Bench. Further I find that in the appellant's own case it has been consistently held in various decisions cited supra wherein this Tribunal by following the decision of Bill Forge, Strategic Engineering and J.K. Tyre & Industries Ltd. has consistently set aside the demand of interest and imposition of penalty. Hence, by following the ratios of the said decision, I am of the considered view that the impugned order is not sustainable in law and I set aside the same by allowing the appeal of the appellant.

(Operative portion of the order was pronounced in the Open Court on 03/08/2021)