

(2024) 05 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 40350 Of 2018

M/s. Mobis India Ltd

APPELLANT

Vs

Commissioner Of GST And Central Excise

RESPONDENT

Date of Decision : 07-05-2024

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 14, 15(2)
Central Excise Act, 1944 — Section 11A, 11AA, 11AB, 11AC, 11A(4)
Finance Act, 1994 — Section 73, 75

Citation : (2024) 05 CESTAT CK 0007

Hon'ble Judges : Beevi C.S., Member (J); Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : Senguttuvan, M. Selvakumar

Final Decision : Allowed

Judgement

Vasa Seshagiri Rao, J

1. Excise Appeal No. E/40350/2018 has been filed by M/s. Mobis (India) Limited assailing the Order-in-Appeal No. 265/2017(CTA-II) dated 30.09.2017 passed by Commissioner of Central Tax (Appeals-II), Chennai for setting aside impugned Order-in-Original No. LTU/79-81/2015 dated 20.03.2015 issued by the Assistant Commissioner, erstwhile Large Tax Payer Unit confirming the demand of wrongly availed credit of Rs.5,76,079/- while dropping levy of interest under Rule 14 of Cenvat Credit Rules, 2004(CCR) read with Section 11AA of the Central Excise Act, 1944 (ACT) and non-imposition of penalty under Rule 15(2) of CCR read with Section 11 AC of the Act *ibid*.

2.1 The facts of the case are that the appellant, engaged in manufacture of motor vehicle parts falling under CETH 87089900 had, during the period 2009-2012 inadvertently availed cenvat credit of Rs.93,703/- pertaining to certain damaged goods on which insurance claim was made and received by the Appellant. Further, the Appellant was found to have availed excess credits of Rs.94,128/-, Rs.2,49,893/- & Rs.1,38,355/-on receipt of stock transferred goods

at its three depots situated at Bhiwandi, Rewari and Irungattukottai. On being pointed out, the Appellant reversed the wrongly availed Cenvat credit on damaged goods and also reversed the excess credit availed on 28.02.2013. However, the department was of the view that interest was to be paid on Cenvat credit wrongly availed. Hence three show cause Notices all dated 30.06.2014 were issued to the Appellant seeking to recover the Cenvat Credits of Rs.94,128/-, Rs.2,49,893/- & Rs.2,32,058/- respectively, wrongly availed along with interest under Rule 14 of CCR read with Section 11A(4)/11AA of the Act *ibid*. Further it was proposed to impose penalty equal to the Cenvat credit wrongly availed in terms of Rule 15(2) of CCR read with Section 11 AC of the Act *ibid*.

2.2 The Appellant, during the adjudication proceedings submitted that they have inadvertently availed Cenvat credit on damaged goods due to unintentional clerical lapse which was immediately reversed on being pointed out by audit and maintained that the excess credits availed were not utilised towards payment of duty on the clearance of final products as they were maintaining huge balance of Cenvat credit, hence no interest was payable and relied on various decisions supporting their stance. Further, it was stressed that there was no suppression of facts warranting imposition of penalty.

2.3 After due process of law, the adjudicating authority *vide* impugned Order-in-Original No. LTU/79-81/2015 dated 20.03.2015 confirmed the demand of Cenvat Credit wrongly availed totalling Rs.5,76,079/- and appropriated the amount already paid towards the demand but dropped the proposals for levy of interest and imposition of penalty proposed in the Show Cause Notices.

2.4 Aggrieved, the Department preferred an appeal before the Commissioner (Appeals), by relying on the decision in the case of M/s. Ind Swift Laboratories Ltd. [2011 (256) ELT 3 (SC)] and the lower appellate authority *vide* Order-in-Appeal No. 265/2017 (CTA-II) dated 30.09.2017 set aside the impugned Order-in-Original and confirmed the levy of interest up to 17.03.2012 and imposition of equal penalty as proposed in the Show Cause Notice. The lower appellate authority had in the impugned order discussed the provisions of Rule 14 of the CCR prior to and after 17.03.2012 in detail before confirming levy of interest up to 17.03.2012 and confirmed the equal penalty by following the ratio of the decision in the case of Sree Rayalseema Hi-Strength Hypo Ltd. Vs. Commissioner of Customs and Central Excise, Tirupathi [2012 (278) ELT 167 (AP)]. Hence, the present appeal before this forum by the Appellant.

3. The main grounds of the appeal filed by the Appellant are as follows:-

i. The impugned order failed to consider the revenue neutral situation in the present case as they held huge Cenvat balance which was unutilised and hence the demand for interest and penalty would not sustain.

ii. There was no loss to the Government as the Appellant has merely made a book entry and involves no flow of revenue and hence the levy of interest was

devoid of merits.

iii. There was no malafide intention to evade payment of duty as Cenvat credit allegedly taken was reversed on being pointed out and as such imposition of penalty would not sustain.

4. The Ld. Counsel Shri Senguttuvan, appearing for the Appellant submitted that there was no pecuniary loss in view of huge Cenvat balance and hence interest would not arise. In this regard, reliance was placed on the decision of the Hon'ble High Court of Karnataka in the case of Bill Forge Pvt. Ltd.- [2011 (4) TMI 209 (Kar.)] and decision in Final Order No. 41026/2023 dated 09.11.2023 reported in [2023(11) TMI 467] in their own case and also ratio of the decisions in the case of :-

i. Lakshmi Machine Works Ltd. Vs. Commissioner of Central Excise, Coimbatore [2010 (8) TMI 403-CESTAT]

ii. Commissioner of Central Excise, Madurai Vs. Strategic Engineering Pvt. Ltd. [2014 (11) TMI 89-Madras High Court]

5. The Ld. Authorised Representative Shri M. Selvakumar representing the Department reiterated the findings of the lower Appellate Authority.

6. Heard both sides and have considered the submissions and evidences on record.

7. The issues that arise for decision in this appeal are:-

(i) Whether interest is leviable on irregular/excess Cenvat Credit availed but not utilised? and

(ii) Whether extended period is invokable and imposition of equal penalty sustainable?

8. We find that the issue of leviability of interest on irregularly availed Cenvat Credit is no more res integra in view of the Hon'ble High Court of Karnataka's decision in the case of Bill Forge Pvt. Ltd.- [2011 (4) TMI 209 (Kar.)] , wherein it was held as follows:-

"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(Union of India v. M/s. Ind-Swift Laboratories Ltd) 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.

23. Under these circumstances, we do not see any error committed by the Tribunal in passing the impugned order. Accordingly, the substantial question of law framed is answered against the Revenue and in favour of the assessee."

9. Further, in the case of Lakshmi Machine Works Ltd. Vs. Commissioner of Central Excise, Coimbatore [2010 (8) TMI 403-CESTAT] it was held as follows:-

"6. I have carefully considered the submissions from both sides and perused the records. Rule 14 of the CENVAT Credit Rules, 2004 read as under :-

"Recovery of CENVAT credit wrongly taken or erroneously refunded. - Where the CENVAT credit has been taken or utilised wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer

or the provider of the output service and the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries”.

The credit taken under the CENVAT Credit Scheme relates to duty paid by the raw material suppliers. The credit taken by the recipient-manufacturer is actually utilised only when debited towards duty on the final products. Merely by taking a wrong credit inadvertently, the assessee has not availed any monetary benefit. In an analogous situation if the assessee-manufacturer maintains a PLA account, the balance available in the said account does not earn interest for them. The CENVAT credit ?taken or utilised? should be read as CENVAT credit “taken and utilised” for the purpose of demand of interest. This is particularly so when the credit taken is on account of clerical mistake and when the assessee is having sufficient balance in their CENVAT credit account and the mistake has been detected by the assessee themselves. Therefore, I hold that no interest is payable.”

10. We also find that in Commissioner of Central Excise, Madurai Vs. Strategic Engineering Pvt. Ltd.[2014 (11) TMI 89-Madras High Court], it was held as follows:-

“10. In fact, this Court has perused the entire decision reported in 2012 (26) S.T.R. 204 (Karnataka) (Commissioner of Central Excise & S.T., Bangalore v. Bill Forge Private Limited) and ultimately found that mere taken of CENVAT credit facilities is not at all sufficient for claiming of interest as well as penalty.

11. It is an admitted fact that Rule 14 of the Cenvat Credit Rules as been subsequently amended, wherein it has been clearly stated as “taken and utilised”. Therefore, it is quite clear that mere taking itself would not compel the assessee to pay interest as well as penalty. Further, as pointed out earlier, the subsequent amendment has given befitting answer to all doubts existed earlier. Since, the subsequent amendment has cleared all doubts existed earlier in respect of Rule 14 of the said Rules, it is needless to say that the argument advanced by the learned counsel appearing for the appellant/Department is erroneous, whereas the argument advanced on the side of the respondent is really having merit and the substantial questions of law settled in the present Civil Miscellaneous Appeal are not having substance and altogether the present Civil Miscellaneous Appeal deserves to be dismissed.”

11. We find that the invocation of extended period on irregularly availed Cenvat Credit and excess credit is settled in view of this Tribunal’s decision in the Appellants own case in Final Order No. 41026/2023 dated 09.11.2023 wherein this Tribunal held as follows:-

“7.1.5 In the case of J.K. Tyre and Industries Ltd. Vs. Assistant Commissioner of Central Excise, Mysore [2016 (340) ELT 193 (Tri. -LB)], Tribunal Large Bench has come to the conclusion that interest liability would not arise when the assessee had merely availed credit and had reversed the same before utilizing the availed

credit for remittance of duty.

7.1.6 The same view was taken by the Tribunal in the following cases:- i. Commissioner of Central Excise Vs. Sharda Energy & Minerals Ltd. [2013 (291) ELT 404 (Tri.-Del.)] ii. Gary Pharmaceuticals (P) Ltd. Vs. Commissioner of Central Excise, [2013 (297) ELT 391 (Tri.-Del.)] iii. Commissioner of Central Excise Vs. Balrampur Chini Mills Ltd., [2013-TIOL-1142- CESTAT-Del] iv. M/s. Gurmehar Construction Vs. Commissioner of Central Excise [2014-TIOL-1205-CESTAT-Del]

7.1.7 Appreciating the ratio of above decisions, we find that the recovery of interest is not legally justified and not

7.2.2 We find that the appellant though have taken credit irregularly or wrongly in the books it was never utilized. So, it is not justified to attribute any motive to evade tax to the conduct of the appellant. Even irregularly availed CENVAT Credit has been reversed by the appellant on being pointed out much before the issuance of the Show Cause Notice. As such, invoking extended period is not justified in this appeal. Thus, the appellant succeeds on limitation also.??

12. Even in this appeal, it is on record that the appellant has reversed the entire Cenvat credit wrongly taken on being pointed out as a result of audit of its accounts.

13. We find that the issue in Sree Rayalseema Hi-Strength Hypo Ltd. Vs. Commissioner of Customs & Central Excise, Tirupathi relied in the impugned order pertains to Cenvat Credit availed on Welding electrodes used for repairs and maintenance of plant and machinery and it was held that since the assessee was not entitled to avail the credit, extended period of limitation could be invoked. However, the facts in the present case are quite different and hence the ratio of the decision in the above case is not applicable.

14. We find that the appellant though have taken credit merely in the books, it was never utilised. So, it is not justified to attribute any motive to evade tax to the conduct of the appellant. Even irregularly availed Cenvat credit has been reversed by the appellant on being pointed out much before the issuance of the Show Cause Notice. As such, invoking the extended period is not justified in this appeal.

15. Hence by appreciating the ratio of the above decisions, we are inclined to hold that interest is not leviable on the irregular availment of credit and excess credit and also that extended period of limitation is not invokable. Thus, the impugned order is set aside and the original order is restored.

16. The appeal is allowed as above with consequential relief, if any, as per the law.