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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F NO. 195/1017-1018/13-RA /5883 Date of Issue: 12/12/19

ORDER NO.290-291/2019-CX (WZ) /ASRA/MUMBAI DATED05.12.19 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicants : M/s Eaton Industrial System Pvt. Ltd.

Respondents : Deputy Commissioner of Central Excise, Pune-II

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No PUN-EXCUS-003-APP-280 & 281-13-14 dated 09.10.2013 passed by the Commissioner(Appeals), Central Excise, Pune-III.

ORDER

This two Revision Applications have been filed by M/s Eaton Industrial System Pvt. Ltd., B-33, Ranganaon Industrial Area, Tal-Shirur, Pune – 412 210 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No PUN-EXCUS-003-APP-280&281-13-14 dated 09.10.2013 passed by the Commissioner(Appeals), Central Excise, Pune-III

2. Briefly, the Applicant is a manufacturer of "Transmissions" falling under CH 87084000, and had filed two rebate claims amounting to Rs. 10,27,862/- dated 15.11.2012 and Rs. 35,85,173/- dated 22.01.2013 in respect of the goods manufactured and cleared for exports by them under Rule 18 of the Central Excise Rules, 2002 (herein after as 'CER) read with Notification No. 19/2004 dated 06.09.2004 read with Section 11B of the Central Excise Act, 1944 (herein after as 'CEA'). During scrutiny of the claims, it was observed that during the audit of the records of the Applicant, the Department had observed that certain amount of Cenvat credit availed by them was in-admissible. The Applicant agreed to the said observations and paid/reversed the said in-admissible Cenvat credit. However, they did not discharge the interest liability of Rs. 21,99,371/-. Hence the Applicant was issued Show Cause Notice as to why the interest due to the Government should not be appropriated against the rebate claims. The Deputy Commissioner of Central Excise, Pune-VIII Division vide Orders-in-Original Nos. 1068/Ref & Reb/CEX/12-13 and 1068/Ref & Reb/CEX/12-13 both dated 25.03.2013 sanctioned the rebate claims of Rs. 9,86,574/- and Rs. 35,07,011 respectively in cash under the provision of Section 11B of the CEA. and the amount of interest dues of Rs. 9,86,574/- and Rs. 12,12,797/- respectively was appropriated against sanctioned claim. Further, sanctioned the amount of Rs. 41,288/- and Rs. 78,162/- respectively as refund through credit of Cenvat Account of the Applicant under Section 11B of CEA. Aggrieved, the Applicant then filed appeals with the Commissioner(Appeals), Central Excise, Pune-III, who vide Orders-in-

Appeal No PUN-EXCUS-003-APP-280&281-13-14 dated 09.10.2013 upheld both the two Order-in-Original both dated 25.03.2013 and the Applicant appeals were rejected.

3. Being aggrieved, the Applicant then filed the current two Revision Applications on the following grounds :

3.1 That no Show Cause Notice was issued to them to challenge the levy of interest. Instead, only a notice dated 25.02.2013 asking the Applicant as to why interest is not liable to be appropriated was issued to them without a supporting adjudicating order for the interest liability. The only basis for appropriate of interest is the observation made in the audit report and the letter dated 26.11.2012 issued by the Superintendent of Central Excise. Therefore the case of is arbitrary and illegal because the department sought to recover interest from the Applicant that was never confirmed by a competent adjudicating authority. In this they relied on the decision of the Delhi Tribunal in the case of Ghatampur Sugar Co. Ltd Vs Commissioner of Central Excise, Kanpur [2011 (274) ELT 395].

3.2 The Dy. Commissioner in his order relied upon the judgment of the Hon'ble Tribunal in Bisleri International Vs CCE Chennai [2009 (241) ELT 555]. In their case, there was no affirmation of demand in the first place and in the absence of any confirmed demand order, it can be safely concluded that Bisleri International (Supra) is not even remotely applicable to their case.

3.3 That in view of Section 11 of the CEA, the outstanding interest liability can be recovered or adjusted by the Revenue only after a formal confirmation of the demand and adjudication of the show cause notice. A mere issuance of a letter by the Range Officer or the audit observations does not constitute a confirmed

demand. And the act of reversal of credit does not amount to confirmation of demand of interest or acceptance of demand by the Applicant.

3.4 That the orders appropriating the proposed interest amount was passed on 25.03.2013, whereas the SCN for interest and penalty was issued subsequently on 03.04.2013. Moreover, the SCN dated 03.04.2013 still did not afford any chance to the Applicant to challenge the levy of interest but only informed that the appropriation of proposed interest amount by the audit team was already done against the rebate claims sanctioned on 25.03.2013.

3.5 That in response to the letter of the Range Officer dated 26.11.2012, the Applicant objected to the proposed appropriation through their letter dated 24.12.2012. The Applicant in their response stated that the imposition of penalty and interest was not agreeable to them and that they sought to challenge the levy of interest and penalty. However, the departmental authority paid no heed to their submission and proceeded with the appropriation of interest. The Applicant has preferred an appeal before the Hon'ble Mumbai Tribunal, challenging the levy and appropriation of interest.

3.6 That the appropriation of unconfirmed demands was premature as the mater was sub judice. It is settled position of law that demands cannot be adjusted against rebate claim in live or subjudice matter. In this they relied in case of Voltas Ltd Vs CCE Hyderabad [2006 (201) ELT 615 (Tri-Bang)].

3.7 That Rule 14 of CCR was amended w.e.f. 01.04.2012. The amended rule provides that interest is payable only if credit as availed and utilized. CBEC has issued clarification vide D.O. F.No. 334/3/2012-TRU dated 16.03.2012

17.3 Rule 14 is being amended to substitute the word "or" with "and" so that interest is not payable on credit wrongly taken unless the same is utilized.

This amended Rule 14 of CCR necessitates retrospective application. The erroneous Cenvat credit availed (prior to 01.04.2012), but not utilized by them ought to be eligible for the beneficial provision that exists after 01.04.2012, as the error was detected by the authorities after 01.04.2012. Thus, there cannot to be any liability to pay interest.

3.8 That they prayed that interest be paid to the Applicant for short payment of rebate claim amount.

4. A personal hearing in the case was held on 26.08.2019 and Ms Vidisha Vaidya, Indirect Tax Manager attended on behalf of the Appellant. The Appellant reiterated the ground of appeal and further submitted that error of availing excess Cenvat credit was made by them suo motto, even audit objection were reversed. Appropriation of interest was made without raising any SCN, or issues any adjudicating order.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. On perusal of records, Government observes that during the EA 2000 Audit of the records of the Applicant for the period August 2007 to August 2012 which was conducted on 17th to 20th September, 2012, the Department had observed that certain amount of Cenvat credit availed by them was in-admissible. The Applicant agreed to the said observations and paid/reversed the said in-admissible Cenvat credit. The jurisdictional Superintendent of Central Excise, Range II, VIII Division then vide letter dated 26.11.2012 requested the Applicant inter alia to submit all the relevant Cenvat registers and pay the applicable interest and penalty. However, the Applicant did not pay the interest liability of Rs. 21,99,371/-

and vide their letter dated 24.12.2012 submitted that the excess Cenvat credit availed was duly reversed as pointed out by the Audit and since there was sufficient Cenvat balance in their Cenvat register, no interest is payable on account of delay in reversal of Cenvat credit and consequently no penalty is warranted. The Applicant then filed rebate claims and was issued SCNs as to why the interest due to the Government should not be appropriated against the rebate claims. The Deputy Commissioner of Central Excise, Pune-VIII Division vide Orders-in-Original Nos. 1068/Ref & Reb/CEX/12-13 and 1068/Ref & Reb/CEX/12-13 both dated 25.03.2013 then while sanctioning the rebate claims, interest dues of Rs. 9,86,574/- and Rs. 12,12,797/- respectively was appropriated against sanctioned claim.

7. The Rule 14 of CCR was amended w.e.f. 01.04.2012. Prior to the amendment, the Rule 14 of CCR, 2004 stated

> ***Rule 14. Recovery of CENVAT credit wrongly taken or erroneously refunds.*** *– Were the CENVAT credit has been taken or utilized 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 section 11A and 11AB of the Excise Act or section 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries.*

Government, therefore, finds that whereas the excess/non reversal of Cenvat credit detected via Audit, this was reversed was by the Applicant. However for the period in question i.e. August 2007 to August 2012, Rule 14 of CCR (prior to the amendment) was applicable. Hence, the interest was payable from the date of availment of the wrong credit even when not utilized accrual of interest is automatic.

8. Government observes that Section 11 of Central Excise Act, 1944 permits an adjustment of duty or interest due to the Revenue from the amount payable to the assessee. The jurisdictional Superintendent had vide letter dated 26.11.2012 requested the Applicant to pay the applicable interest. In this case, the no separate show cause notice is required for recovery of interest due from the Applicant. Hence the appropriation of

adjustment by the adjudicating authority of the amount of interest of Rs. 21,99,371/- due from the Applicant under Section 11 of Central Excise Act, 1944 was legal and proper. In this regard, Government also places reliance on the judgment of the Hon'ble Tribunal Chennai in the case of Needle Industries (I) (P) Ltd. Vs Commissioner of C.Ex. Salem [2010 (256) ELT 767 (Tri.-Cennai)] wherein the Hon'ble Tribunal has categorically stated that no separate show cause notice is required for recovery of interest and or for adjustment of any amount due to the Government from the amount payable to the assessee.

9. In view of above discussions and findings, Government finds no infirmity in impugned in the Order-in-Appeal No PUN-EXCUS-003-APP-280&281-13-14 dated 09.10.2013 passed by the Commissioner(Appeals), Central Excise, Pune-III and upholds the same.

10. The Revision Application filed by the Applicant is dismissed being devoid of merit.

11. So ordered.

5/12/18

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No 290-291 /2018-CX (WZ) /ASRA/Mumbai DATED 05.12.2018

To,
M/s Eaton Industrial System Pvt. Ltd.,
B-33, Ranganaon Industrial Area,
Tal-Shirur, Pune – 412 210.

Copy to:

1. The Commissioner of Central Goods & Service Tax, Pune-II, GST Bhavan, ICE House, Opp. Wadia College, Pune- 411 001.
2. The Dy. Commissioner, CGST, Division-II, Kolhpur
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.