

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAX CASE NO. 24 OF 2014

Commissioner, Central Excise and Customs, Dhamtari Road, Tikrapara, Raipur (C.G.), through Dy. Commissioner (Legal), Central Excise and Customs, Raipur.

... Appellant

Versus

M/s Vandana Vidyut Ltd., Sirgitti Industrial Area, Bilaspur (C.G.)

... Respondent

For Appellant	:	Mr. Maneesh Sharma, Advocate.
For Respondent	:	Mr. Vinay Jain, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

01/12/2015

1. The present appeal arises from order dated 26.11.2013 dismissing Excise Appeal No. 1900-1902/2006-EX(SM) by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as the Tribunal). The Tribunal held that if CENVAT credit had been taken but was reversed before utilization, interest was not payable under Rule 14 of the Cenvat Credit Rules 2004 (hereinafter referred to as 'the Rules') as the CENVAT Credit remained a paper entry only in absence of its utilisation.

2. While issuing notice on 15.4.2015, the following question of law had been framed :-

“If Cenvat Credit was availed as input for non-excisable goods and reversed only after show cause notice was issued, is interest liable to be paid under Rule 14 of the Cenvat Credit Rules on the subsequently reversed credit.”

3. We have heard Counsel for the parties at length and are satisfied that the question of law as framed above can be answered at this stage itself. The appeal is not required to be admitted for hearing.

4. Learned Counsel for the Appellant submitted that under Rule 14 the liability for payment will arise on the mere happening of CENVAT credit taken wrongly. Relying on 2011 (265) E.L.T. 3 (S.C.) [Union of India v. Ind-Swift Laboratories Ltd.], it was submitted that the provisions of Rule 14 were disjunctive with regard to three different situations and cannot be read conjunctively. It was not necessary that the CENVAT credit must have been taken and then utilised. The mere taking of CENVAT credit to which there was no entitlement itself invites payment of interest. The Tribunal therefore committed manifest error of law in holding that if the CENVAT credit had been taken by making paper entries only and had not been utilised, there is no liability to pay interest. Reliance on 2012 (26) S.T.R. 204 (Karnataka) [Commissioner of Central Excise and Service Tax, Bangalore v. Bill Forge Pvt. Ltd.] was erroneous.

5. Learned Counsel for the Respondent heavily relied upon Bill Forge Pvt. Ltd. (supra) to submit that the mere taking of CENVAT credit by paper entries without utilization of the same will not invite interest under Rule 14 after reversal. It was next submitted that the observations in Ind-Swift Laboratories Ltd. (supra) came to be made on its own facts in as much as CENVAT credit was taken on fake invoices and the company had ultimately approached for settlement proceedings. CENVAT credit had been taken and utilised wrongly and refund was made after it was questioned by the authorities. In any event, interest is compensatory in nature and the liability will arise when

the tax is due but is not paid as held in 1996 (88) E.L.T. 12 (S.C.) [Pratibha Processors v. Union of India].

6. Having considered the submissions on behalf of the parties and the question of law framed, it is first considered appropriate to set out Rule 14 in its entirety:

“RULE 14. Recovery of CENVAT credit wrongly taken or erroneously refunded. – Where 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 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.”

7. We may profitably refer to Ind-Swift Laboratories Ltd. (supra) with regard to manner for interpretation for taxing statutes observing as follows:-

“19. A taxing statutes must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statutes so as to supply any assumed deficiency. In support of the same we may refer to the decision of this Court in Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd. reported in (1961) 2 SCR 189 wherein this Court at Para 10 has observed as follows : -

“10. In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statutes and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency”.”

8. We shall now consider the ratio laid down in Ind-Swift Laboratories Ltd. (supra) observing that three conditions mentioned in Rule 14 with regard to taking of CENVAT credit, wrong utilisation of such CENVAT credit or erroneous refund were to be read disjunctively and not conjunctively. In other words, interest was to be paid on the

happening of either of the three events. We consider it appropriate to set out the discussion in this regard as follows:-

“17..... In our considered opinion, the High Court misread and misinterpreted the aforesaid Rule 14 and wrongly read it down without properly appreciating the scope and limitation thereof. A statutory provision is generally read down in order to save the said provision from being declared unconstitutional or illegal. Rule 14 specifically provides that where CENVAT credit has been taken or utilised wrongly or has been erroneously refunded, the same along with interest would be recovered from the manufacturer or the provider of the output service. The issue is as to whether the aforesaid word "OR" appearing in Rule 14, twice, could be read as "AND" by way of reading it down as has been done by the High Court. If the aforesaid provision is read as a whole we find no reason to read the word "OR" in between the expressions 'taken' or 'utilized wrongly' or 'has been erroneously refunded' as the word "AND". On the happening of any of the three aforesaid circumstances such credit becomes recoverable along with interest.”

9. The aforesaid consideration takes it beyond the ambit of any controversy that under Rule 14, even if the CENVAT credit was taken by making paper entries by one not entitled to the same, the liability for interest arises irrespective of its reversal before utilization. The conclusion of the Tribunal that the CENVAT credit having remained a paper entry only liability for interest would not arise in absence of utilization was thus clearly erroneous.

10. The fact that the liability would arise from wrong taking of CENVAT credit by making entries and that utilisation was the second step thereafter which was not required to be necessarily fulfilled for the liability of interest becomes apparent from the following passage:-

“20. Therefore, the attempt of the High Court to read down the provision by way of substituting the word "OR" by an "AND" so as to give relief to the assessee is found to be erroneous. In that regard the submission of the counsel for the appellant is well-founded that once the said credit is taken the beneficiary is at liberty to utilize the same, immediately thereafter, subject to the Credit rules.”

11. In other words, the taking of CENVAT credit precedes the utilisation. If CENVAT credit had been wrongly taken, that is an independent liability by itself irrespective of its utilisation which may have followed, as far as taxing statutes are concerned.

12. Since Learned Counsel for the Respondent has heavily relied upon Bill Forge Pvt. Ltd. (supra), we consider it proper to discuss the same also even though it is not binding on us. We regret our inability to concur with the discussion in paragraph 22 of the same that the mere taking of CENVAT credit wrongly by making entries would not invite liability for interest unless it had been utilised also. In our respectful opinion, that would be against the discussion and the law laid down in Ind-Swift Laboratories Ltd. (supra) that the liability for interest arises on the wrong taking independent of utilisation.

13. The order of the Tribunal is therefore held to be not sustainable. The question of law is answered in favour of the Appellant.

14. The appeal is allowed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge