IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 36 of 2015 (O&M)

Date of Decision: 27.8.2015

M/s Goodyear India Ltd., Ballabgarh, Faridabad

....Appellant.

Versus

The Commissioner, Central Excise, Delhi-IV

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. M.P. Devnath, Advocate with
Mr. Amrinder Singh, Advocate and
Mr. Amar Pratap Singh, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. CM No.17618-CII of 2015 is allowed and the appellant is permitted to make good the deficiency in court fee.

2. This appeal has been preferred by the assessee under Section 35G of the Central Excise Act, 1944 (in short “the Act”) against the order dated 14.1.2015 (Annexure A-1) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as “the Tribunal”), claiming the following substantial questions of law:-

(i) Whether in facts & circumstances of present case impugned order is correct as per the prevailing law and facts?

(ii) Whether in facts & circumstances of present case impugned order is correct when the CENVAT has been utilized by the appellant in accordance with law?

(iii) Whether in facts & circumstances of present case impugned order is correct when the appellant has paid the entire amount much before their due date?

(iv) Whether in facts & circumstances of present case impugned order is correct when interest has been demanded from the appellant in contravention of the settled legal principles?

(v) Any other question which this Hon'ble High Court may consider fit in the facts and circumstances of the present case?

2. The facts, in brief, necessary for adjudication of the present appeal as narrated therein may be noticed. The appellant is engaged in the manufacture of tyres and claimed modvat/cenvat credit on its inputs and capital goods in accordance with the statutory provisions. One of the inputs used by the appellant for manufacture of its finished goods is tyre cord fabric. During the period in question, the appellant was procuring the tyre cord fabric which attracted levy of Basic Excise Duty (BED) and Additional Excise Duty under Goods of Special Importance Act, 1957 [AED (GSI)]. From 1995 to 2003, the appellant was taking credit of AED (GSI) and was not utilizing the same. Accordingly, un-utilized balance of credit of AED (GSI) lying with the appellant on 1.3.2003 was ₹ 15,43,76,318/-. The Finance Act, 2003 made

amendments to Cenvat Credit Rules, 2002 (in short “2002 Rules”) allowing utilization of credit of AED (GSI) for discharging duty liability of BED and Special Excise Duty (SED). However, the said provision did not specify upto which date prior to the date of amendment could it be utilized for payment of BED and SED. Thus, the appellant utilized credit of AED (GSI) to the tune of ₹ 13,27,33,800/- for discharging liability of BED and SED on its finished goods out of which ₹ 8,71,12,812/- had accrued during the period prior to 1.4.2000. Section 88 of the Finance Act, 2004 (for brevity “2004 Act”) amended Rule 3(6) of the 2002 Rules retrospectively providing that only the AED (GSI) credit accrued after 1.4.2000 could be utilized for payment of BED and SED on the finished products and not the credit accrued prior to 1.4.2000. The adjudicating authority vide order dated 19.4.2005 (Annexure A-4) confirmed the duty demand to the tune of ₹ 8,71,12,812/- along with interest and dropped the penalty proceedings. It also dropped the duty demand of ₹ 4,56,50,988/- for the period post April 2000. The appellant vide receipts dated 31.12.2004 (Annexures A-5 and A-6, respectively) deposited the duty of ₹ 8,71,12,812/-. According to the appellant, out of the total demand, a sum of ₹ 21,38,512/- pertaining to credit on inputs used in the manufacture of exported finished goods was not part of the present dispute. Feeling aggrieved against the order, Annexure A-4, the appellant filed an appeal on 29.6.2005 (Annexure A-7) before the Tribunal who vide order dated 14.1.2015 (Annexure A-1) upheld the order of the adjudicating authority and dismissed the appeal. Hence, the present appeal.

3. The primary issue which arises for consideration of this Court is as to whether the appellant is liable to pay interest under

Section 11AB of the Act or interest liability is to be determined in terms of clause (v) of Section 88(4) of the Finance Act, 2004 as incorporated by Section 124 of the Finance Act, 2005.

4. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

5. Section 88(1) of the 2004 Act retrospectively amended Rule 3(6) of the 2002 Rules providing that AED (GSI) Credit accrued prior to 1.4.2000 could not be used for payment of BED and SED. However, sub-section (4) of Section 88 thereof provided for recovery of AED (GSI) Credit prior to 1.4.2000 which was availed for payment of BED and SED. The said provision reads thus:-

> "**88. Amendment of the CENVAT Rules, 2002.-**
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> (1) In the CENVAT Credit Rules, 2002 made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944), in rule 3, in sub-rule (6), in clause (b), the Explanation shall stand amended and shall be deemed to have been amended retrospectively in the manner as specified in the Second Schedule, on and from the corresponding date mentioned in column (3) of that Schedule and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said Explanation shall be deemed to be, and to have always been, for all purposes, as validly and effectively, taken or done as

if the said Explanation as amended by this sub-section had been in force at all material times.

(2) and (3) XX XX XX

(4) Recovery shall be made of all such CENVAT credit of additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) which has been availed but which would not have been availed if the amendment made by sub-section (1) was in force at all material times and the provisions of CENVAT Credit Rules, 2002 relating to the recovery of CENVAT credit, along with interest shall apply for the recovery made under this sub-section subject to the modification that the relevant date defined in Section 11A of the Central Excise Act, 1944 (1 of 1944), shall, for the purposes of recovery under this sub-section, be deemed to be the date on which the Finance (No.2) Bill, 2004 receives the assent of the President.

Explanation 1.- For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which could not have been so punishable if this section had not come into force.

Explanation 2.- For the purposes of this section, the expression "CENVAT Credit" has the meaning assigned to it in the CENVAT Credit Rules, 2002."

6. It would also be expedient to refer to other statutory

provisions and the rules framed thereunder. Section 11A of the Act provides for recovery of duties not levied or not paid or short levied or short paid or erroneously refunded. Section 11AB of the Act as it existed at the relevant time mandates payment of interest on delayed payment of duty. The relevant portion of the said provision reads thus:-

> "**11AB. Interest on delayed payment of duty.**- (1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay duty as determined under sub-section (2), or has paid the duty under sub-section 2(B), of section 11A, shall, in addition to the duty, be liable to pay interest at such rate not belong ten per cent and not exceeding thirty six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first date of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2), or sub-section (2B), of section 11A till the date of payment of such duty.
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> XX XX XX
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> XX XX XX"

Under Rule 12 of the 2002 Rules, the revenue is empowered to recover CENVAT Credit wrongly taken by the manufacturer. It reads thus:-

> "Rule 12. Recovery of CENVAT credit wrongly taken.- Where the CENVAT credit has been taken or utilized wrongly, the same along with interest shall be recovered from the manufacturer and the provisions of sections 11A and 11AB of the Act shall apply *mutatis mutandis* for effecting such recoveries."

7. On the combined reading of the above referred provisions, it emerges that under sub-section (4) of Section 88 of the 2004 Act where AED (GSI) pertaining to the period prior to 1.4.2000 had been utilized for payment of BED and SED, the recovery of CENVAT Credit along with interest shall be made under Rule 12 of 2002 Rules read with Section 11A and interest would be liable under Section 11AB of the Act. The relevant date specified in the provision as 10.9.2004 is for the purpose of determining the period of limitation for issuing show cause notice for recovery under Section 11A of the Act and not for levy of interest under Section 11AB of the Act. According to Section 11AB of the Act, interest would be leviable from 1st day of the month succeeding the month in which the credit was erroneously utilized for payment of BED and SED till actual payment of wrongly utilized credit. The appellant had wrongly utilized AED (GSI) Credit pertaining to period prior to 1.4.2000 in 2003 immediately after amendment to Rule 3(6) of 2002 Rules. Thus, the interest liability under Section 11AB of the Act would commence from 1st day of the following month when wrong utilization had taken place till the payment of wrongly utilized credit.

8. Further, the appellant had sought to claim benefit of the amendment brought by Section 124 of the Finance Act, 2005. It may be noticed that Section 88 of 2004 Act was amended by adding sub-

sections (5) and (6) by Section 124 of the Finance Act, 2005. The relevant clause (v) of sub-section (5) thereof stipulates that interest on the amount of credit utilized for paying CENVAT duty shall be @ 13% per annum for the period beginning on and from the day when each time the amount of credit was utilized and ending on 10.9.2004. Though sub-section (5) added to Section 88 of 2004 Act starts with non obstante clause and would have an overriding effect on sub-section (4) of Section 88 of 2004 Act, nonetheless it would apply only to those cases where the wrongly utilized AED (GSI) Credit still remains outstanding on the date of the coming into force of Finance Act, 2005.

9. We find that the order of the Tribunal is in conformity with the position explained hereinbefore and, therefore, it does not call for any interference by this Court. No substantial question of law arises. Accordingly, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 27, 2015
gbs

(RAMENDRA JAIN)
JUDGE