

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CEA No. 38 of 2016 (O&M)
Date of decision: 15.05.2018**

**Commissioner Central Excise Commissionerate, SCO No.6, Sector 1,
Rohtak.**

.....Appellant

Vs.

**M/s Grasim Bhiwani Textile Limited (Unit Bhiwani Textile Mills) BTM
Road, Birla Colony, Bhiwani.**

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE**

HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Tejinder K. Joshi, Senior Standing Counsel for the
appellant-revenue.

Mr. Amit Goyal, Advocate for the respondent.

Ajay Kumar Mittal, (ACJ).

1. This appeal has been preferred by the appellant-revenue under Section 35G of the Central Excise Act, 1944 (in short, "the Act") against the impugned order dated 07.10.2015, Annexure A-3, passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (in short, "the Tribunal") in Appeal No. E/2181/2008-EX (DB), claiming following substantial questions of law:-

“(i) Whether the Tribunal is justified in holding that the extended period, under the facts and circumstances of the case, is not invokable?

(ii) Whether the Tribunal is right in holding that under the facts and circumstances of the case, the penalty is not to be imposed and interest cannot be charged under the provisions of the Central Excise Law?”

2. A few facts necessary for adjudication of the controversy involved, as narrated in the appeal, may be noticed. M/s Grasim Industries Limited Bhiwani known as M/s Grasim Bhiwani Textile Limited – respondent-assessee is engaged in the manufacture of Polyester Viscose Blended yarn and manmade fabrics falling under Chapter Sub heading No.5509, 5100, 55151130 respectively to the Central Excise Tariff Act, 1985. It is also availing the facilities of notification dated 09.07.2004 simultaneously w.e.f 01.07.2006 wherein it is permitted to the respondent to clear excisable goods on payment at the appropriate rate as well as availment of Cenvat Credit of the duty paid on the inputs used in the manufacture of dutiable goods. Notification dated 01.07.2004 provides for clearance of excisable goods without payment of central excise duty but no availment of Cenvat credit on inputs used in the manufacture of goods cleared under this notification. It was observed from the records of the respondent that it had availed the Cenvat credit of service tax on input service which was used in the manufacture of dutiable as well as exempted goods whereas as per Rule 6(1) of the Cenvat Credit Rules, 2004 (in short, “the Rules”), the Cenvat credit shall not be allowed on such quantity of inputs or input service which is used in the manufacture of exempted goods or exempted services. On being pointed out by the Department on 09.08.2007, the respondent reversed the service tax credit of ₹ 65,21,123/- under protest on 16.10.2007 on the

proportional basis of clearance value of dutiable goods and exempted goods. The respondent during the period from January 2007 to March 2007 availed the Cenvat credit of ₹ 64,60,537/- of service tax paid on input service which was used in the manufacture of exempted goods in contravention of the provisions of Rule 6(1) of the Rules and the same was recoverable under Rule 14 of the Rules read with Section 11A of the Act. Accordingly, the respondent was issued a show cause notice dated 24.1.2008 as to why the inadmissible credit of Cenvat should not be disallowed and recovered which was paid under protest alongwith interest as applicable and why a penalty for contravention of the provisions of the rules, should not be imposed under the rules. The Commissioner, Central Excise, Rohtak vide order dated 15.7.2008, Annexure A.2, confirmed the demand of ₹ 64,60,537/- under Rule 14 of the Rules read with Section 11A of the Act by invoking extended period as applicable and appropriated the amount of ₹ 64,60,537/- as already deposited by the respondent by vacating the protest. A penalty of equal amount was also imposed on the respondent under Rule 15 of the Rules read with Section 11AC of the Act. Aggrieved by the order, the respondent filed an appeal before the Tribunal. Vide order dated 7.10.2015, Annexure A.3, the Tribunal allowed the appeal. Hence the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the parties.

4. Undisputedly, the respondent-assessee was clearing dutiable as well as exempted products from its unit and was also availing credit of service tax paid on input service. It did not maintain separate account as provided under Rule 6 of the Rules. The department pointed out that the credit availed on the input service was not admissible to the respondent. On pointing out the defects, the respondent reversed the credit amount of ₹

65,21,123/- pertaining to the period from January 2007 to March 2007 under protest on 16.10.2007. A show cause notice was issued to the respondent on 24.01.2008. The demand of inadmissible credit of ₹64,60,537/- alongwith interest, and penalty was confirmed. At the time of hearing before the Tribunal, learned counsel for the respondent confined his argument with regard to the demand of interest and imposition of penalty. According to the respondent, the credit had been reversed prior to utilisation and therefore such reversal would amount to not taking credit. Therefore, the demand of interest was unsustainable. After considering the relevant case law on the point, the Tribunal held the demand of interest as unsustainable. With regard to the imposition of penalty, it was recorded by the Tribunal that on 4.7.2006, the respondent had written letter explaining the manner of availing the credit of inputs, capital goods and input service. When the department called the respondent to furnish the details regarding availment of credit, it had furnished the same.

5. In *Commissioner of Central Excise, Ludhiana Vs. Jagatjit Industries Limited*, 2011 (22) S.T.R. 518 (P&H), this court held that where the Cenvat Credit wrongly availed was reversed before utilizing the same, there was no justification for demand of interest.

6. The observations recorded by the Tribunal read thus:-

“6. Arguments advanced having been narrowed to the issue of demand of interest and imposition of penalty we do not enter into the merit of the case. The demand of interest is countered by learned counsel by putting forward the contention that the credit was reversed prior to the utilization. Opening and closing balance of the credit amount pertaining to the respective months substantiates this contention put forward by the appellant.

The judgments relied upon by the learned counsel analyses the issue of payment of interest in the case of reversal of credit. Hon'ble Karnataka High Court in the case of *CCE, ST and LTU, Bangalore Vs. Bill Forge Pvt. Ltd- 2012 (279) ELT 209* (supra), held that before utilization of credit, if the same has been reversed it would amount to not taking credit and would not attract liability of interest. Similar view has been taken in the other judgments cited and placed before us. Following the principle laid in these judgments, we hold that as the credit has been reversed before utilization, the demand of interest is unsustainable.

7. Next question to be considered is imposition of penalty. Interestingly, it is stated in the show cause notice that the same is issued invoking the extended period of limitation. As per records, the department has come to know about wrongful availment of credit and informed the appellants the same on 09.08.2007. The show cause notice is dated 24.01.2008 for which in our view is within the period of limitation. We do not find any ground necessary for invoking the extended period of limitation. Be that as it may, the contention of the appellant that there was no suppression of facts or willful mis-statement is not without force. On 04.07.2006, the appellants have written letter explaining the manner of availing the credit of inputs, capital goods and input service. Further, when the department called for to furnish the details regarding availment of credit, the appellants had furnished the same. On such score, we hold that the respondents have miserably failed to establish suppression or mis-statement with intention to evade payment of duty on the part of the appellants. Pursuant to the above reason, we are of the considered view that the imposition of penalty is unwarranted.”

7. In the present case, since the credit had been reversed by the respondent prior to its utilisation, the Tribunal rightly held the demand of interest unsustainable. Even with regard to the imposition of penalty, since there was no intention to evade payment of duty on the part of the respondent, the same was also held to be unwarranted. Learned counsel for the appellant-revenue has not been able to point out any illegality or perversity in the findings recorded by the Tribunal. We also do not find any ground to differ with the view taken by the Tribunal. Consequently, no substantial question of law arises and the appeal as well as CM-15056-CII-2016 stand dismissed.

(Ajay Kumar Mittal)
Acting Chief Justice

May 15, 2018
‘gs’

(Tejinder Singh Dhindsa)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes