(2014) 01 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : CEA No. 8 of 2011 (O&M)

ANS Steel Tubes Limited APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A, 11-A, 11A(3) (ii) (b), 11AC, 35G
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2014) 01 P&H CK 0063

Hon'ble Judges : Anita Chaudhry, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Sandeep Goyal, Advocates for the Appellant; Sukhdev Sharma, Advocates for the Respondent

Judgement

Ajay Kumar Mittal, J.

CM No. 25339 CII of 2013

1. This is an application under Section 151 of the Code of Civil Procedure for disposal of the appeal in terms of the order dated 12.9.2013 passed in CEA No. 49 of 2012 (M/s. Jai Bharat Maruti Limited v. Commissioner of Central Excise, Delhi III, Vanijya Nikunj, Udyog Vihar, Phase-Gurgaon (Haryana).

2. Notice of the application was issued to the respondent on 18.12.2013. Mr. Sukhdev Sharma, Advocate appears.

3. At the joint request of learned counsel for the parties, the main appeal is taken up today for hearing.

CEA No. 8 of 2011

4. The assessee has preferred this appeal under Section 35G of the Central Excise Act, 1944 (in short, "the Act") against the order dated 27.9.2010 Annexure A.1 in Appeal No. 3031 of 2009-SM passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, (in short, "the Tribunal''), claiming

following substantial questions of law:-

i) Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order in original passed by the respondent and by holding that extended period of limitation could be invoked for charging interest under section 11AB in the facts of this case, ignoring the assessee''s bonafide action and conduct and the fact that extended period under the proviso to Section 11A and penalty under Section 11AC are based on same prerequisites none of which is attracted in the present case?

ii) Whether on the facts and in the circumstances of the case, the Tribunal ought not to have called for the original records of proceedings before the respondent which resulted in the order in original having been passed erroneously and mechanically in haste without proper consideration fairly and objectively of the factual and legal submissions made by the appellant and binding decisions of courts and Tribunals placed before him and ought not to have vacated the impugned order in original?

iii) Whether on the facts and in the circumstances of the case, the incorrect and improper order of so called adjudication which could not have been passed on 24.8.2009 when the personal hearing also was only on the same evening at about 5.00 pm that too for a few minutes when nothing was heard, explained or understood from the appellant''s representative and therefore the confirmation of such illegal order by the appellate authority without even seeing the original records and the manner of passing orders by the respondent had led to serious injustice and avoidable multiplicity of proceedings for which the Tribunal''s order as well as the order in original are liable to be quashed?

iv) Whether on the facts and in the circumstances of the case, the Tribunal was justified in not following the decisions of courts and Tribunals placed before it on the question of extended period of limitation not being invokable for levy of duty or interest and thereby passing the impugned order to make out a new case against the assessee which the revenue did not and for this reason also, the impugned order is liable to be vacated?

v) Whether on the facts and in the circumstances of the case, the Tribunal ought not to have vacated or quashed the levy of interest under section 11AB for the financial year 2006-07 in view of the show cause notice having been issued on 4.3.2008 especially because of there being no wilful misstatement or suppression of facts by the appellant in any manner whatsoever?

vi) Whether on the facts and in the circumstances of the case, the Tribunal was justified in not following the decisions of the Supreme Court as well as the High Courts as also the Tribunal including also the decisions of Coordinate Benches holding clearly that where the divergent views existing earlier from courts and Tribunals stand resolved by the Supreme Court subsequently, for the period prior to the decision of the Supreme Court, the assessee cannot be found at fault by alleging wilful misstatement of facts by the assessee especially when the assessee has followed the binding decisions of the Tribunal as well as the High Courts which were available before the decision of the Supreme court came to be pronounced?

vii) Whether on the facts and in the circumstances of the case, the Tribunal being a final fact finding body at the appellate stage could not have functioned as original authority to give its own findings of fact without records and documents of the revenue placed before it and when no such finding had been given by the original authority, thereby causing grave injustice/prejudice to the appellant for which the impugned order is unsustainable?

viii) Whether on the facts and in the circumstances of the case the Tribunal was justified in ignoring the definition of ''relevant date'' in section 11A(3) (ii) (b) under which the date of adjustment of duty paid provisionally after final assessment thereof is required to be taken as the only basis for raising a demand if any within the normal period of limitation and the same applies for interest also and the impugned order is unsustainable as being beyond the scope of express statutory provisions in the Act?

5. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The appellant is a company incorporated under the Companies Act, 1956 having its registered office at New Delhi. It is engaged in the business of manufacture and sale of iron and steel falling under Central Excise Tariff Heading 73069011 of the first Schedule of the Central Excise Tariff Act, 1985. The question is whether the liability to pay interest on differential excise duty already paid at the time of issue of supplementary invoices would continue and if so can such interest liability be demanded beyond the normal period of limitation of one year from the date of supplementary invoice under Section 11A read with Section 11AB of the Act. The appellant was served with a show cause notice-cum-demand notice dated 4.3.2008 by the respondent based on the audit objection of Internal Revenue Audit whereby interest was sought to be charged for the clearances made earlier and for which duty was paid between 14.6.2006 to 20.8.2007. The appellant filed reply to the said notice vide letter dated 27.3.2008, Annexure A.8. Personal hearing was also given to the appellant by the Commissioner on 24.8.2009. Vide order of even date i.e. 24.8.2009, Annexure A.10, the Commissioner confirmed the demand of interest of Rs. 6,58,621/- leviable on the differential duty of Rs. 55,28,780/- under Section 11AB read with section 11A of the Act. Aggrieved thereby, the appellant filed appeal before the Tribunal. Vide order dated 27.9.2010, Annexure A.1, the appeal was dismissed. Hence the present appeal.

6. We have heard learned counsel for the parties and perused the record.

7. Learned counsel for the appellant submits that the present petition is squarely covered in favour of the appellant by the decision of this Court in M/s. Jai Bharat Maruti Limited''s case (supra) and may be disposed of in the same terms. In the said case, it has been held as under:-

"We have heard counsel for the parties, perused the impugned order and find no reason to differ from the opinion recorded by the Delhi High Court in Hindustan Insecticides Ltd. v. Commissioner Central Excise, LTU (supra). The CESTAT, vide a common order, dismissed appeals filed by the appellant and M/s. Hindustan Insecticides Ltd. The order passed by CESTAT has been reversed by the Delhi High Court, by relying upon judgments in Kwality ICE Cream Company and Another Vs. Union of India and Others, and Commissioner v. TVS Whirlpool Limited, 2000(119) ELT A177 (SC) and holding that as the period of limitation that applies to recovery of the principal amount shall also apply to the claim for interest thereon, the demand is time barred. The opinion recorded by the Delhi High Court in Kwality Ice Cream Company and Another v. Union of India and others (supra) was followed by the Punjab and Haryana High Court in Commissioner, Central Excise Commissionerate v. VKN Industries Private Limited (CEA No. 67/2011 (O&M), decided on 17.04.2012), by holding as follows:-

"6. There is no dispute that assessee has paid the differential duty on supplementary invoices regularly and has shown the same in the ER-I returns, which were filed regularly before the department, therefore, issuance of show cause notice for interest on the delayed payment should also be within a period of one year as stipulated under Section 11-A of the Act. Therefore, department has absolutely no jurisdiction to issue show cause notice after expiry of the period of limitation for interest on the delayed payment for the period from 2002-03 to 2005- 06. Division Bench of Delhi High Court in the case of Kwality Ice Cream Company and another Vs. Union of India and others, W.P.(c) 14414-15/2006 decided on 18.1.2012 has also held that period of limitation, unless otherwise stipulated by the statute, which applies to a claim for the principal amount should also apply to the claim for interest thereon."

A similar view has been taken by the Bombay High Court in Central Excise Appeal No. 116/2011, Commissioner of Central Excise Mumbai-III v. Supreme Petrochem Limited and the Gujarat High Court in Tax Appeal No. 56/2011, C.C.E. and C, Vadodara-II Vs. Gujarat Narmada Fertilizers Co. Ltd., The respondents do not allege much less assert that any other period of limitation applies or that short payment was made due to fraud, collusion etc. and, therefore, while following the aforesaid judgments, we find no reason to accept arguments addressed by counsel for the revenue and have no hesitation in holding that period of one year would apply to the present case.

In view of what has been stated hereinabove, we answer the questions of law in favour of the appellant, set aside the impugned order and allow the appeal, in terms of judgment in Hindustan Insecticides Ltd. v. Commissioner Central Excise, LTU (supra)."

Learned counsel for the respondent does not dispute the applicability of the above mentioned decision.

8. In view of the above, the substantial questions of law are answered in favour

of the appellant and against the revenue. The appeal stands allowed.

