(2014) 01 P&H CK 0167

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 25339-C-II of 2013 and Central Excise Appeal No. 8 of 2011 (O&M)

A.N.S. Steel Tubes Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 31-01-2014

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

Citation : (2014) 45 GST 226 : (2014) 26 GSTR 145

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

Bench : Division Bench

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

Judgement

Ajay Kumar Mittal, J.

Civil Miscellaneous No. 25339-C-II of 2013

1. This is an application u/s 151 of the CPC for disposal of the appeal in terms of the order dated September 12, 2013 passed in Central Excise Appeal No. 49 of 2012 (Jai Bharat Maruti Ltd. v. CCE [2014] 26 GSTR 141 (P & H)). Notice of the application was issued to the respondent on December 18, 2013. Mr. Sukhdev Sharma, advocate appears.

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

Central Excise Appeal No. 8 of 2011

3. The assessee has preferred this appeal u/s 35G of the Central Excise Act, 1944 (in short, "the Act") against the order dated September 27, 2010, annexure A1 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 u/s 11AB in the facts of this case, ignoring the assessee''s bona fide action and conduct and the fact that extended period under the proviso to section 11A and penalty u/s 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 August 24, 2009 when the personal hearing also was only on the same evening at about 5 p.m. 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 u/s 11AB for the financial year 2006-07 in view of the show-cause notice having been issued on March 4, 2008 especially because of there being no willful 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 co-ordinate Benches holding clearly that where the divergent views existing earlier from the 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 willful 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?

4. 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 the Central Excise Tariff Heading 7306 90 11 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 u/s 11A read with section 11AB of the Act. The appellant was served with a show-cause notice-cum-demand notice dated March 4, 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 June 14, 2006 to August 20, 2007. The appellant filed reply to the said notice vide the letter dated March 27, 2008, annexure A8. Personal hearing was also given to the appellant by the Commissioner on August 24, 2009. Vide the order of even date, i.e., August 24, 2009, annexure A10, the Commissioner confirmed the demand of interest of Rs. 6,58,621 leviable on the differential duty of Rs. 55,28,780 u/s 11AB read with section 11A of the Act. Aggrieved thereby, the appellant filed an appeal before the Tribunal. Vide the order dated September 27, 2010, annexure A1, the appeal was dismissed. Hence the present appeal.

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

6. The 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 Jai Bharat Maruti Ltd. [2014] 26 GSTR 141 (P & H) and may be disposed of in the same terms. In the said case, it has been held as under (page 143 of 26 GSTR):

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. Vs. Commissioner Central Excise, . The CESTAT, vide a common order, dismissed the appeals filed by the appellant and M/s. Hindustan Insecticides Ltd. The order passed by the CESTAT has been reversed by the Delhi High Court, by relying upon the judgments in Kwality ICE Cream Company and Another Vs. Union of India and Others, and Commissioner v. T.V.S. Whirlpool Ltd. [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 Vs. Union of India and Others, was followed by the Punjab and Haryana High Court in (2014) 24 GST 286 (P & H.) (Central Excise Appeal No. 67/2011 (O & M), decided on April 17, 2012), by the holding as follows (page 289 of 24 GSTR):

There is no dispute that the 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 u/s 11A of the Act. Therefore, the 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. The Division Bench of Delhi High Court in the case of Kwality Ice Cream Co. v. Union of India [2012] 13 GSTR 198 (Delhi) Writ Petition (C) Nos. 14414 to 14415/2006, decided on January 18, 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, CCE v. Supreme Petrochem Ltd. 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 the judgment in Hindustan Insecticides Ltd. Vs. Commissioner Central Excise,

7. The learned counsel for the respondent does not dispute the applicability of the above mentioned decision. 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.

