(2013) 09 P&H CK 0095

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous Nos. 17624 and 17625 of 2013 and Central Excise Appeal No. 49 of 2012 (O&M)

Jai Bharat Maruti Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2014) 307 ELT 282 : (2014) 26 GSTR 141

Hon'ble Judges : Rajive Bhalla, J;Mehinder Singh Sullar, J

Bench : Division Bench

Judgement

Rajive Bhalla, J.

Civil Miscellaneous No. 17624-C-II of 2013

1. Allowed as prayed for. Annexures 12 to A18 are taken on record.

Civil Miscellaneous No. 17625-CII of 2013

2. Prayer in this application is for early hearings on the ground that the Delhi High Court, has reversed the common order passed by the Tribunal against the appellant and another company.

3. The counsel for the respondent states that he has no objection, if the appeal is taken on Board and is decided along with the application.

4. Ordered accordingly.

Central Excise Appeal No. 49 of 2012

5. The appeal challenging an order dated July 20, 2012 (annexure A1), passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi (CESTAT), was admitted for final hearing on the following substantial questions of law:

(i) Whether the relevant date of payment of the duty consequent to revision of price is the date when the goods are removed from the factory premises or the date when differential duty is paid?

(ii) That if the appellant was liable to pay duty on the date of removal of goods from the factory premises, whether the appellant is liable to pay interest from the date of removal of goods from the factory premises?

(iii) Whether the show-cause notice dated October 28, 2004 claiming interest for a period of more than one year is tenable in terms of section 11A read with section 11AB of the Central Excise Act, 1944?

6. The counsel for the appellant submits that the questions so framed arise from a common order passed by the CESTAT against the appellant and another assessee, M/s. Hindustan Insecticides Ltd. The appellant filed the present appeal before this court whereas M/s. Hindustan Insecticides Ltd., filed an appeal before the Delhi High Court. The order passed by the CESTAT against M/s. Hindustan Insecticides Ltd. has been set aside by the Delhi High Court in Hindustan Insecticides Ltd. Vs. Commissioner Central Excise, (Central Excise Act Case Nos. 48 and 49/2012), decided on August 2, 2013. The counsel for the appellant prays that in view of this fact the appeal may be allowed and the impugned order may be set aside, in terms of the order passed by the Delhi High Court.

7. The counsel for the Revenue, however, submits that order passed by the High Court of Delhi, is incorrect as it has not taken into consideration the provisions of section 11A read with section 11AB of the Central Excise Act, 1944 and as, admittedly, duty was paid after delay, the appeal should be dismissed and reliance should not be placed upon the judgment of the High Court of Delhi.

8. 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 the 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 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 Company and Another Vs. Union of India and Others, , 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.

9. 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 the 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, .