(2014) 01 P&H CK 0168

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous Nos. 25833 and 25834-C-II of 2013 and Central Excise Appeal No. 30 of 2013 (O&M)

Neel Metal Products 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) 306 ELT 367 : (2014) 48 GST 218 : (2014) 26 GSTR 150

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

Bench : Division Bench

Advocate : Sandeep Gayal, Advocate for the Appellant; Sukhdeo Sharma, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.

Civil Miscellaneous No. 25833-C-II of 2013

1. Allowed as prayed for.

Civil Miscellaneous No. 25834-C-II of 2013

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)).

2. Notice of the application was issued to the learned counsel for the respondent on January 8, 2014. Mr. Sukhdev Sharma, advocate appears.

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

Central Excise Appeal No. 30 of 2013

4. The assessee has preferred this appeal u/s 35G of the Central Excise Act 1944

(in short, "the Act") for setting aside the final order dated July 20, 2012, annexure A1 in Appeal No. E/325 of 2010 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, (in short, "the Tribunal") claiming the following substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the Tribunal ought not to have followed the earlier binding decision of co-ordinate Bench of the Tribunal in the case of 2010 (19) S.T.R. 904 and failure to Mow the same has not vitiated the impugned order which is unsustainable in law?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal ought not to have rectified its own mistakes apparent from record and ought not to have recalled its impugned judgment and order dated July 20, 2012 and ought not to have referred the matter to a larger Bench if at all a different view was sought to be taken?

(iii) Whether on the facts and in the circumstances of the case, the mistakes of fact and law committed by the Tribunal ought not to have been rectified by it by recalling its order and by adopting/following the earlier decision of co-ordinate Bench on the same issue in Emco Ltd. v. CCE [2011] TIOL-1585-CESTAT-MUM?

(iv) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that there is no time limit nor any show-cause notice required for levy and recovery of interest u/s 11AB against the assessee?

(v) Whether on the facts and in the circumstances of the case, the Tribunal ought not to have taken into account the fact that there was no provisional assessment and the final determination of price and assessable value and payment of duty thereon had already taken place and the question of charging interest years after such differential duty had already been paid does not arise?

(vi) Whether on the facts and in the circumstances of the case, the Tribunal ought not to have been guided by the basic principle that even in cases where there is no specific time limit prescribed by the statute for issue of notice or for recovery of any sum due, the notice as well as action/order must be within a reasonable time-limit as held by the Supreme Court in State of Punjab and Others Vs. Bhatinda District Coop. Milk P. Union Ltd., and the fact that the Supreme Court itself in Commissioner v. T.V.S. Whirlpool Ltd. [2000] 199 ELT A177 (SC) has held that what applies to tax must apply equally to interest and therefore both demand of tax and levy of interest can only be within the normal statutory time limit of one year prescribed u/s 11A of the Central Excise Act?

(vii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in relying upon a sales tax case involving U.P. Sales tax when the statutory provisions of the Central Excise Act and Sales Tax Act are not common on levy of tax and interest?

(viii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the orders of tower authorities 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 pre-requisites none of which is attracted in the present case, as rightly accepted by the lower authorities for not levying any penalty?

(ix) Whether on the facts and in the circumstances of the case, the Tribunal was justified in not following the decisions of the courts and the 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?

(x) 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?

(xi) 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 auto components, sheet metal components and tools falling under Central Tariff Headings 8708 10 90, 8207 30 00 of the first schedule of the Central Excise Tariff Act, 1985. The appellant has long term contracts with the buyers of its finished excisable goods, namely, Maruti Suzuki India Limited and other automobile manufacturers. 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. It was issued seven different show-cause notices for different periods and the demand of interest was raised in some cases within the normal period of one year which the assessee accepted and paid under protest while in other cases where extended period of limitation had been invoked to raise the demand for interest, the assessee agitated the same in appeal before the Tribunal even though the amount had to be paid under protest because of coercive action or recovery from the Revenue, which had been dismissed by the Tribunal. After

considering the matter, the Additional Commissioner of Central Excise passed an order dated October 30, 2009, annexure A6 confirming the demands of interest as per show-cause notices. Against the said order, the appellant filed appeal before the Commissioner of Central Excise (Appeals) Gurgaon who upheld the order and dismissed the appeal vide the order dated November 19, 2010, annexure A8. Aggrieved thereby, the appellant filed an appeal before the Tribunal which was dismissed vide the order dated July 20, 2012, annexure A1 impugned herein. Hence the present appeal.

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

7. 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.''s case [2014] 26 GSTR 141 (P & H) and may be disposed of in the same terms. In the said judgment, 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 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 the 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.

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,

8. The learned counsel for the respondent does not dispute the applicability of the above mentioned judgment. 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.