Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 174 of 2012

(Arising out of OIA-9-10/2012/AHD-I/CE/MM/COMMR-A-/AHD passed by Commissioner of Central Excise-AHMEDABAD-I)

Asoka Cotsyn **........Appellant**
C/O, Arvind Limited,
Naroda Road,
Ahmedabad, Gujarat

VERSUS

C.C.E., Ahmedabad-i **.......Respondent**
C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat-380015

With
Excise Appeal No. 11927 of 2019

(Arising out of OIA-9-10/2012/AHD-I/CE/MM/COMMR-A-/AHD passed by Commissioner of Central Excise-AHMEDABAD-I)

Arvind Ltd **........Appellant**
C/O, Arvind Limited,
Naroda Road,
Ahmedabad, Gujarat *VERSUS*

C.C. Ahmedabad **.......Respondent**
C. Ex Bhavan,
Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat-380015

APPEARANCE:
Shri S. J. Vyas, Advocate for the Appellant
Shri. Sanjiv Kinker, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 12341-12342 /2019

DATE OF HEARING: 03.12.2019
DATE OF DECISION:03.12.2019

RAMESH NAIR

The brief facts of the case are that the appellants are engaged in manufacture of the Cotton Yarn and supply to the interrelated units / theirs group companies. They were valuing their goods on cost construction method. Since at the time of the removal the cost of manufacturing not available, they were paying duty on the provisional value and after the finalization of the books of the companies, they were calculating the exact cost of the manufacture and were paying a differential duty. The issue involved is that whether the appellant is required to pay interest on such differential duty from the due date of the duty payment in accordance with the date of removal of the goods or from the date of payment of the differential duty.

2. Shri. S. J. Vyas, Learned Counsel appearing on behalf of the appellant at the outset submits that as regard payment of interest, the Hon'ble Supreme Court in the case of Steel Authority of India Ltd - 2019 5 TMI SC, held that in case of provisional value even though the differential duty arise subsequently the interest is payable from the due date with reference to the date of removal of the goods. However, his submission is only on limitation. He submits that the appellant has disclosed their modus operandi of valuation of the goods vide letter dated 14 July, 2006. According to the said letter the appellants were paying duty by applying due date and since the value was not ascertained at the time of removal of the goods the differential duty was paid after finalization of cost of manufacturing. Therefore, there was no suppression of facts on the part of the appellant. He submits that the due date for payment of interest should start from the date of payment of differential duty. Therefore, from such date the demand of interest beyond one year is time barred. He also placed reliance on the following judgment.

- Apar Industries Ltd – 2019 8 TMI 961 HC BOM
- Larsen and Toubro – 2019 10 TMI 1022 TRI BOM
- Hindustan Insecticides Ltd 2013 297 ELT 332 DEL
- Apar Ind Ltd. 2017 (346) ELT 503 Tri AHD
- Parle Products Ltd 2017 358 ELT 798 TRI BOM

2.1 He further submits that since the transaction of goods is within the same company the consignee was entitled for the Cenvat Credit hence the situation is revenue neutral, for these reasons also the extended period cannot be invoked.

3. Shri Sanjiv Kinker, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned orders.

4. We have carefully considered the submission made by both the sides and perused the records. As regards the merits of the case as conceded by the Learned Counsel and held by Hon'ble Supreme Court in the case of Steel Authority of India Ltd, the interest is chargeable from the due date as prescribed in rule 8 of Central Excise Rules, 2002 and not from the payment

of differential duty. Therefore, the demand of interest on merit is sustainable, however, the appellant have strongly argued on the limitation. In this regards we find that the appellant had practice to pay the duty on provisional value at the time of removal of the goods and only on finalization of books of accounts the actual cost of manufacturing is arrived at and whenever there is a short of value, they were paying the differential duty. It is also observed that even before audit the appellant had been paying the differential duty as per their above method. It is also observed that the supply of the goods is to their own division who are entitled for the Cenvat Credit. Therefore, due to Revenue neutral situation extended period could not have been invoked. With these facts there is no suppression of facts and mala fide on the part of the appellants. Accordingly the demand for extended period is not sustainable, as a result appeal No. E/174/2012 involves entire demand of extended period is allowed.

5. As regard the appeal No. E/11927/2019 Shri S. J. Vyas, Learned counsel submits that in this appeal, since the amount is very meagre the appellant is not contesting and he concede that the amount of the demand of interest shall be paid by the appellant. On this submission appeal No. E/11927/2019 is dismissed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Kamakshi