

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

EXCISE Appeal No. 975 of 2012-DB

[Arising out of Order-in-Original/Appeal No 63-COMMR-2012 dated 23.10.2012 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-RAJKOT]

Jmd Oils Pvt Ltd

...Appellant

Survey No. 320, Village : Bhimasar,
Taluka : Anjar, Gandhidham,
Kutch, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot

...Respondent

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot,
Gujarat-360001

APPEARANCE:

None for the Appellant

Shri. Kalpesh P Shah, Assistant Commissioner (Authorized Representative) for the Respondent

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

FINAL ORDER NO. A/10774 / 2023

DATE OF HEARING:08.12.2022

DATE OF DECISION: 03.04.2023

RAMESH NAIR

The brief facts of the case are that the appellants are engaged in the manufacture of various excisable goods like refined soya bene oil, refined palm oil, Vanaspati , acid oil, fatty acid, palm fatty acid, washing soap, waste tin cutting scrap, waste corrugated scrap, waste plastic scrap, empty in container, plastic jar, corrugated boxes, Corrugated top/bottom etc., falling under respective tariff heading of the First Scheduled to Central Excise Tariff Act, 1985 and availing area based exemption under Notification No. 39/2001-CE 31.07.2011. The appellant have got various depots situated across India and they clear the finished goods manufactured by them to these depots from time to time. The Department observed that during the period from 2005-06 to 2009-10 (upto April, 2009). The appellant had cleared their finished goods

to their depots and paid duty on the value determined by them at the factory gate. Subsequently from depot the goods were sold at higher price that was actually charged by them at their depot. The case of the department is that in case of depot clearance the price at which the goods are actually sold the duty is payable on such transaction value charged from depot in terms of Rule 7 of Central Excise Valuation Rules, 2000. Accordingly, differential duty of Rs. 52,58,133/- was short paid on the comparison of duty paid at factory gate price and duty payable at depot sale price. A Show Cause Notice dated 09.03.2011 was issued for demanding duty, interest and penalty. The said Show Cause Notice was adjudicated vide Order In Original No. 63/COMMR/2012 dated 23.10.2012, which is the impugned order herein. Being aggrieved by the said order in original, the appellant filed the present appeal.

2. When the matter was called out, none appeared on behalf of the appellant nor any adjournment request on record, therefore the appeal is taken up for disposal on merit.

3. On going through the appeal memo, it is found that the appellant have not pressed the merit of the case, however, they have strongly submitted that the demand is time bar, on the ground that the appellant was working under Notification No. 39/2001-CE and accordingly they filed periodical refund in respect of the captioned clearances, during the process of the refund claim it had under gone the scrutiny of all the documents such as duty paying invoice which is issued for the depot clearance, depot sale invoices and other documents on that basis, the refund were granted in respect of the duty paid from the PLA. Therefore, there is no suppression of fact, it was also submitted by the appellant that even if duty would have been paid the same would have been refunded along with the refund already granted under Notification No. 39/2001-CE and therefore, being a revenue neutral situation there was no

intention to pay short payment of duty, for this reason also *mala fide* intention is not established, hence the extended period cannot be invoked in the facts of the present case.

4. Shri Kalpesh P. Shah, Learned Assistant Commissioner (Authorized Representative) appearing on behalf of the revenue reiterates the findings of the impugned order.

5. On careful consideration of the submission made by learned AR and perusal of record. We find that as regard the dispute about valuation of the excisable goods, the appellant have not contested strongly. Moreover, we also find that there is no dispute that in case of sale through depot, the transaction value prevailing at depot at the time of sale of goods shall be the transaction value for charging excise duty in terms of Section 4 of Central Excise Act, 1944. Therefore, on merit the demand is sustainable. However, the appellant have made out strong case on limitation. The appellant though working under the self-removal procedure, but they were working under Notification No.39/2001-CE. As per the said notification, the appellant had been filing their refund claim regularly in respect of all the clearances made from their factory. It is very obvious that the department before sanctioning the refund claim was under taking scrutiny of all the records such as duty paying invoice, payment through CENVAT, Payment through PLA, etc., Therefore, it can be conveniently construed that there was no suppression of fact on the part of the appellant. Even as regard the valuation of the excisable goods. We also find that in respect of clearances on which the differential duty demand was raised, the appellant had been sanctioned the refund claim of the portion of the duty paid through PLA. Therefore, the duty demanded in the impugned order was also refundable if it would have been paid at the relevant time. Therefore in fact there is absolutely no revenue loss to the Government as in one hand the appellant was to pay duty from PLA and on other they were entitled for the

refund claim. In this position the entire exercises is of revenue neutral. For this reason also *mala fide* intention cannot be attributed to the appellant. To invoke the *proviso* to Section 11A it is not sufficient that ingredient such as suppression mis-statement, fraud, collusion is involved but in addition to that there should be an intent to evade payment of excise duty. In the present case since the appellant was admittedly entitled for the refund of duty demanded in the impugned order there cannot be any intention to evade payment of duty. In this circumstances, we are of the clear view that there is absolutely no *mala fide* intention to evade the payment of duty on the part of the appellant. Therefore, the demand for extended period is not sustainable. In the present case the SCN was issued on 09.03.2011 for covering the period of 2005-06 to April, 2009. Hence, the entire demand is time bar. Accordingly the impugned order is set aside, appeal is allowed on the ground of time bar.

(Pronounced in the open Court on 03.04.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PALAK