

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

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 12849 of 2013

[Arising Out Of OIA-182-2013-RAJ-CE-AK-COMMR-A-AHD Dated- 25/04/2013 Passed By
Commissioner of Central Excise-RAJKOT]

Shree Soaps & Chemical Industries

C/O. Plot No. 247, Ward-12b,
Opp. Morakhiya Hospital, Gandhidham,
KUTCH, GUJARAT

.....Appellant

VERSUS

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

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

.....Respondent

APPEARANCE:

Shri. S.J. Vyas, Advocate for the Appellant

Shri. P Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO. A / 11332 / 2023

DATE OF HEARING:21.06.2023

DATE OF DECISION:21.06.2023

SOMESH ARORA

The period involved in the show cause notice was initially from October-1995 to September-1997. The learned appellate authority while upholding the interest restricted it to the period from 28th September-1996 to September-1997, as interest provision under the Central Excise Act, at the relevant time came into existence w.e.f. 28.09.1996. The appellant was at the relevant time filing classification list as well as price list, which were being duly approved. However, the matter was agitated right up to the Apex

Court on both classification and valuation issue. The Apex Court on the classification held in favour of litigant assesseees but on the valuation aspect, the matter was held against the litigant assesseees. Consequently, the present appellants were issued show cause notice relating to valuation aspect on which they discharged duty but at present are contesting, interest as per the provision of Section 11AB as well as penalty on the basis of invocation of Rule 173(Q), which is subjected to Section 11AC on the ground that in the show cause notice they were subjected to consequential periodic demands. There is no invocation of any suppression of facts etc., nor is there any finding to that effect by the lower authorities and that in any case same cannot be imagined on the classification list and price list having been duly approved by the department. He on the basis of all these materials and relying upon the decision of Hon'ble Gujarat High Court as reported in 2012 (5) TMI 474 in the matter of PRINCE MULTIPLAST PVT. LTD VS. UNION OF INDIA requests for dropping of interest demand under Section 11AB as well as penalty under 173(Q). On being asked by this Court whether it will be of consequence that in this case interest provision has been wrongly quoted and Section 11AA needs to be considered as interest provision for the normal period demand. The learned advocate took this Court to the provision specially the clause relating to subjecting the provision of Section 11AA to the provision of 11AB and indicating that in case duty is paid within three months of the same being demanded on determination of the same, the interest clause cannot be invoked. Therefore, he pointed out that hypothetically considering there was a wrongly provision quoted, department has no case to demand interest as duty by them was discharged within three months of determination of the same therefore Section 11AA could not have been attracted.

2. Learned AR confronted with the situation fairly reiterates the findings of the lower authorities.

3. Considered, it is seen that the specific provision of 11AB requires that the same can be invoked only, when there is suppression clause incorporated coupled with intent to evade in the show cause notice, which is not forthcoming anywhere in the order from the authority below. This Court therefore holds that the appellants are entitled to relief and accordingly allows the appeal with consequential relief both on the point of interest as well as penalty.

4. Appeal is allowed.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI