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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 11881 OF 2016-DB

[Arising out of Order-in-Original/Appeal No CCESA-VAD-APP-II-VK-159-174-2016-17 dated 28.07.2016 passed by Commissioner of Central Excise-VADODARA-I]

Gujarat Insecticides Limited **.... Appellant**
Plot No 805-806 GIDC
Ankleshwar, BHARUCH, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Bharuch **.... Respondent**
Vadodara-II,GST Bhavan, Subhanpura, Vadodara
Vadodara, Gujarat -390023

AND

EXCISE Appeal No. 11882 OF 2016-DB

[Arising out of Order-in-Original/Appeal No CCESA-VAD-APP-II-VK-159-174-2016-17 dated 28.07.2016 passed by Commissioner of Central Excise-VADODARA-I]

Gujarat Insecticides Limited **.... Appellant**
Plot No 805-806 GIDC
Ankleshwar, BHARUCH, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Bharuch **.... Respondent**
Vadodara-II,GST Bhavan, Subhanpura, Vadodara
Vadodara, Gujarat -390023

WITH

EXCISE Appeal No. 11883 OF 2016-DB

[Arising out of Order-in-Original/Appeal No CCESA-VAD-APP-II-VK-159-174-2016-17 dated 28.07.2016 passed by Commissioner of Central Excise-VADODARA-I]

Gujarat Insecticides Limited **.... Appellant**
Plot No 805-806 GIDC
Ankleshwar, BHARUCH, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Bharuch **.... Respondent**
Vadodara-II,GST Bhavan, Subhanpura, Vadodara
Vadodara, Gujarat -390023

APPEARANCE :

Shri Dhaval K. Shah, Advocate for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING/DECISION:12.01.2024

FINAL ORDER NO. 10195-10197/2024

RAMESH NAIR:

In these appeals, vide impugned order passed by learned Commissioner (Appeals), dismissed the appeals on the ground of limitation as the appeals were filed after 90 days.

2. Shri Dhaval Shah, learned Counsel appearing on behalf of the appellant submits that by mistake the appeals were filed before the Joint Commissioner who is the Adjudicating Authority. Later on, when department pointed out, the appeals were filed before the Commissioner (Appeals). Due to this reason, the appeals were filed after 90 days. He submits that it is settled legal position that if the matter is pursued before a different forum, the period of limitation before the that forum may be deducted from the prescribed time limit. He placed reliance on the following judgments:-

(a) Lathia Industries Co Pvt. Ltd vs. CESTAT West Zonal Bench – 2016 (3432) ELT 535 (Guj.)

(b) CCE, Visakhapatanam vs. Cairn Energy India Pvt. Limited – 2015 (316) ELT 612 (A.P.)

(c) HCL Infosystems Limited vs. CC, Chennai – (2023) 2 Centax 32 (Tri. Madras)

3. Considering the submission made by learned Counsel, we find that though the appeals were properly addressed to the Commissioner (Appeals) but inadvertently these were filed in the office of Joint Commissioner who passed the order-in-original. Subsequently, Superintendent (Tech), Division-1, Ankleshwar, Bharuch Commissionerate vide letter dated 05.01.2016 returned all the appeals directing that the appeals to be filed before Commissioner (Appeals). As per the judgments cited supra, it is a settled legal position that if the matter is being pursued before a wrong

forum, the period till the matter is pending before that wrong forum has to be deducted for computing the statutory time limit. Accordingly, in the present case also the period from the date of submitting appeals in the office of Joint Commissioner till the date of return of appeals is deducted, still the appeals are well within the prescribed time limit of 60 days. Therefore, there is no delay in filing the appeals before Commissioner (Appeals). Hence the appeals need to be disposed of on merits.

4. Accordingly, we set-aside the impugned order and remand the matter to Commissioner (Appeals) to decide the matter afresh on merits without going into the issue of limitation.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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