

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 21581 of 2014

[Arising out of Order-in-Original No.
BEL/EXCUS/000/COM/BHR/007/2014(CX) dated
24/02/2014 passed by Commissioner of Central Excise,
Customs and Service Tax, BELGAUM.]

M/s. Ashok Iron Works (P) Ltd

Plant-I, 689/1, Udyambag,
BELGAUM – 590 008.
KARNATAKA

Appellant(s)

VERSUS

**The Commissioner of Central
Excise, Customs and Service
Tax**

NO. 71, CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM – 590 001.
KARNATAKA

Respondent(s)

AND

Central Excise Appeal No. 21581 of 2014

[Arising out of Order-in-Original No.
BEL/EXCUS/000/COM/BHR/008/2014(CX) dated
25/02/2014 passed by Commissioner of Central
Excise, Customs and Service Tax, BELGAUM.]

M/s. Ashok Iron Works (P) Ltd

Plant-III, 552, Machhe Industrial Area
BELGAUM – 590 014.
KARNATAKA

Appellant(s)

VERSUS

**The Commissioner of Central
Excise, Customs and Service
Tax**

NO. 71, CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM – 590 001.
KARNATAKA

Respondent(s)

Appearance:

Shri J. N. Somaiya, Advocate for the Appellant.

Shri H. Jayathirtha, Superintendent, Authorised Representative for the Respondent.

**CORAM: HON'BLE DR. D. M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

Final Order No. 20476 – 20477 / 2023

Date of Hearing: 17/05/2023

Date of Decision: 31/05/2023

Per : DR. D. M. MISRA

These two appeals are filed against respective Orders-in-Original passed by the Commissioner of Central Excise, Belgaum. Since the issue involved in both these appeals are common, hence, they are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of excisable goods viz., C.I. raw castings, C.I. machined components, et., under Chapter 72, 73, 84 & 87 of Central Excise Tariff Act, 1985. They were clearing the goods on payment of duty on the assessable value declared by them. By raising supplementary invoices, subsequent to removal of goods, the appellants discharged differential duty on the differential value collected under supplementary invoices but failed to pay interest on the differential duty paid against the supplementary invoices. Even after repeated letters, pursuant to Audit objection, issued to the appellants in both the cases, they failed to respond by submitting details of supplementary invoices raised and differential duty paid from time to time. However, subsequently, they

responded to the summons and furnished the amount of differential duty paid during the relevant period from August 2008 to March 2013 in Appeal No. E/21581/2014 pertaining to Plant-I and for the period from 2008-09 to 2012-13 in Appeal No. E/21583/2014 for Plant-III. Thereafter, demand for recovery of interest amounting to Rs.4,84,348/- and Rs.15,85,230/- under Section 11AB of Central Excise Act, 1944, respectively, was made by issuing show cause notice invoking extended period limitation. On adjudication, demands have been confirmed and penalty of Rs.5,000/- under Rule 27 of Central Excise Rules, 2002 in each case has been imposed. Hence, these appeals.

3. Learned advocate for the appellant submitted that on raising supplementary invoices from time to time, they have paid the differential duty, however, interest was not paid during the relevant period in both the appeals. It is his contention that in view of the judgment of the Hon'ble Supreme Court in the case of **MRF Ltd.: 1997 (92) ELT 309 (SC)**, they are not at all required to pay the differential Central Excise duty, hence, there is no question of payment of interest also. They have also referred to the judgment of the Hon'ble Karnataka High Court in the case of **Bharat Heavy Electricals Ltd.: 2010 (257) ELT 369 (Kar.-HC)** wherein it has been held that when price is revised retrospectively, no interest is payable. Further, he submits that recovery of interest be limited to the period of one year as there is no suppression of facts. The differential duty paid has been reflected in the monthly returns filed with the Department. Thus, the extended period of limitation

cannot be invoked. In support, he referred to the judgments rendered in the case of **Gujarat State Fertilisers & Chemicals Ltd.: 2013-TIOL-845** and **Hindustan Insecticides Ltd.: 2013 (297) ELT 332 (Del.)**. Further, he submitted that in any case, no penalty is imposable for non-payment of interest.

4. Per contra, learned Authorised Representative for the Revenue submits that appellant had raised supplementary invoices and discharged differential duty on the revised value, however, interest even though attracted was not paid by the appellant. When repeated letters were written to them from time-to-time as observed in the order passed by the learned Commissioner, they have not responded; but finally when summons were issued, after considerable period of time, they provided data informing the details of differential duty paid during the period against the supplementary invoices from time-to-time without discharging interest thereon. He submits that applicability of interest on differential duty paid on supplementary invoices due to enhancement of value is no more *res integra* as it stands settled by the decision of Larger Bench of the Hon'ble Supreme Court in the case of **Steel Authority of India Ltd. Vs. Commissioner of Central Excise, Raipur: 2019 (366) E.L.T. 769 (S.C.)**. It is his contention that the Larger Bench of the Hon'ble Supreme Court concurred with the view expressed by the Division Bench of the same Court in the case of **Commissioner of Central Excise, Pune vs. SKF India Ltd.: 2009 (239) E.L.T. 385 (S.C.)** and **Commissioner of Central Excise vs. International Auto Ltd.: 2010 (250) E.L.T. 3 (S.C.)** Therefore, it is his contention that

demand of interest by the learned Commissioner is valid in law and it is automatically payable when differential duty is paid. There is no time limit for payment of interest. Besides, by non-furnishing data as and when called by the Department, the appellant suppressed the said facts, hence extended period of limitation rightly invoked and confirmed against the appellant. Also, imposition of penalty by the Commissioner is justified.

5. Heard both sides and perused the records.

6. We find that the limited issue involved in this appeal relates to levy of interest on the differential duty paid during the relevant period by issuance of supplementary invoices enhancing the value declared at the time of clearance of the goods.

6.1 We find that the issue has been settled by the Hon'ble Supreme Court in the case of **SKF India Ltd.** (supra), wherein it has been observed as follows:

"9. Section 11A puts the cases of non-levy or short levy, non-payment or short payment or erroneous refund of duty in two categories. One in which the non-payment or short payment etc. of duty is for a reason other than deceit; the default is due to oversight or some mistake and it is not intentional. The second in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty"; that is to say, it is intentional, deliberate and/or by deceitful means. Naturally, the cases falling in the two groups lead to different consequences and are dealt 10 with differently. Section 11A, however allow the assessee in default in both kinds of cases to make amends, subject of course to certain terms and conditions. The cases where the non-payment or short payment etc. of duty is by reason of fraud collusion etc. are dealt with under sub-section (1A) of section 11A and the cases where the non-payment or short payment of duty is not intentional under sub-section (2B). 10. Sub-section (2B) of section 11A provides that the assessee in default may, before

the notice issued under sub-section (1) is served on him, make payment of the unpaid duty on the basis of his own ascertainment or as ascertained by a Central Excise Officer and inform the Central Excise Officer in writing about the payment made by him and in that event he would not be given the demand notice under sub-section (1). But Explanation 2 to the sub-section makes it expressly clear that such payment would not be exempt from interest chargeable under section 11AB, that is, for the period from the first date of the month succeeding the month in which the duty ought to have been paid till the date of payment of the duty. What is stated in Explanation 2 to sub-section (2B) is reiterated in section 11AB that states where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person who has paid the duty under sub-section (2B) of section 11A, shall, in addition to the 11 duty, be liable to pay interest.....It is thus to be seen that unlike penalty that is attracted to the category of cases in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilful mis statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty", under the scheme of the four sections (11A, 11AA, 11AB & 11AC) interest is leviable on delayed or deferred payment of duty for whatever reasons.

.....

14. We are unable to subscribe to the view taken by the High Court. It is to be noted that the assessee was able to demand from its customers the balance of the higher prices by virtue of retrospective revision of the prices. It, therefore, follows that at the time of sale the goods carried a higher value and those were cleared on short payment of duty. The differential duty was paid only later when the assessee issued supplementary invoices to its customers demanding the balance amounts. Seen thus it was clearly a case of short payment of duty though indeed completely unintended and without any element of deceit etc. The payment of differential duty thus clearly came 13 under sub-section (2B) of section 11A and attracted levy of interest under section 11AB of the Act."

6.2 The above said view has been concurred by the Larger Bench of the Hon'ble Supreme Court in the case of **Steel Authority of India** (supra). The relevant paragraph is reproduced below:

"63. We are of the view that the reasoning of this Court in the order referring the cases to us (to this Bench) that for the purpose of Section 11AB, the expression "ought to have been paid" would mean the time when the price was agreed upon by the seller and the buyer does not square with our understanding of the clear words used in Section 11AB and as the rules proclaim otherwise and it provides for the duty to be paid for every removal of goods on or before the 6th day of the succeeding month. Interpreting the words in the manner contemplated by the Bench which referred the matter would result in doing violence to the provisions of the Act and 112 the Rules which we have interpreted. We have

already noted that when an assessee in similar circumstances resorts to provisional assessment upon a final determination of the value consequently, the duty and interest dates back to the month “for which” the duty is determined. Duty and interest is not paid with reference to the month in which final assessment is made. In fact, any other interpretation placed on Rule 8 would not only be opposed to the plain meaning of the words used but also defeat the clear object underlining the provisions. It may be true that the differential duty becomes crystallised only after the escalation is finalized under the escalation clause but it is not a case where escalation is to have only prospective operation. It is to have retrospective operation admittedly. This means the value of the goods which was only admittedly provisional at the 113 time of clearing the goods is finally determined and it is on the said differential value that admittedly that differential duty is paid. We would think that while the principle that the value of the goods at the time of removal is to reign supreme, in a case where the price is provisional and subject to variation and when it is varied retrospectively it will be the price even at the time of removal. The fact that it is known, later cannot detract from the fact, that the later discovered price would not be value at the time of removal. Most significantly, section 11A and section 11AB as it stood at the relevant time did not provide read with the rules any other point of time when the amount of duty could be said to be payable and so equally the interest. We would concur with the views expressed in SKF case(supra) and International Auto (supra). We find no merit in the appeals. The appeals will stand dismissed.”

6.3 On the applicability of extended period, we find that in Appeal No. E/21582/2014, the show-cause notice was issued to the appellants on 31.05.2013 for Plant-III, demanding interest for the period from 2008-09 to 2012-13 on the basis of audit objection raised during the period June 2007. The Commissioner in the impugned order held that inspite of repeated letters issued during the period from April 2011 to October 2012, they failed to respond and finally, the details relating to amount on which differential duty paid was submitted only on 12.08.2013 in pursuance to the summons issued. Similarly, in case of Appeal No. E/21581/2014, show-cause notice was issued on 5.9.2019 in respect of their Plant-I demanding interest on differential duty on the basis of audit of records, conducted during July 2010 to December 2011, for the period 2008-09 to 2012-13. The learned Commissioner observed

that since the appellant failed to furnish the data inspite of repeated reminders, thus, with an intention not to pay interest, suppressed the facts of payment of differential duty in raising supplementary invoices. Accordingly, interest for the extended period is recoverable from the appellant.

6.4 The contention on the other hand by the learned advocate for the appellant is that the amount of differential duty paid on revision of prices, has been periodically reflected in their respective monthly ER-1 returns, therefore, no fact was suppressed from the knowledge of the Department, accordingly, extended period of limitation is not applicable to their case. In support, he referred to the judgement of the Hon'ble Delhi High Court in the case of **Hindustan Insecticides Ltd. Vs. CCE, LTU: 2013 (297) ELT 332 (Del.)** followed by Punjab and Haryana High Court in the case of **Neel Metal Products Ltd. Vs. CCE, Delhi-III: 2014 (11) TMI 497 – (P & H).**

7. We find that the appellant on payment of differential duty on the supplementary invoices due to revision in prices invariably reflected the same in their ER1 returns filed with the department from time-to-time. Thus, calling for the data by the Revenue again which already mentioned in the respective ER-1 Returns and non-furnishing of the same by the appellant in time, in our considered opinion cannot be held as a ground to uphold the suppression of facts in the form of data from the knowledge of the department. We find that in the aforesaid judgments, it has been observed that

on declaration of the differential duty paid by reflecting the same in the relevant monthly returns filed with the department from time-to-time, would not fall within the scope of suppression of fact and accordingly, extended period of limitation was set aside in those cases. Following the principle laid down in the aforesaid cases and change in law with regard to applicability of period of limitation for recovery of interest incorporated at sub-section (15) in Section 11A of CEA,1944 with effect from 08.4.2011, in our opinion, the demand of interest can be sustained only for the normal period. Accordingly, the impugned order is modified to the extent of confirming recovery of interest for the normal period. Since there is no suppression of fact, we do not consider imposition of penalty, in the circumstances of the case, is warranted. Appeal is partially allowed to the extent mentioned as above.

(Order pronounced in the Open Court on **31/05/2023.**)

(DR.D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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