CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/21797/2017-SM

[Arising out of Order-in-Appeal No. BW-EXCUS-000-APP-034-17-18 dated 03/10/2017 passed by the Commissioner of Central Tax, Mysore (Appeals)]

Access Engineering Products Pvt. Ltd.
No. 127/3, Magadi Road, Near
Swayam Prabha Kalyana Mantapa
Kamakshipalya
Bangalore – 560 079
Karnataka

Appellant(s)

Versus

Commissioner of Central Tax,
Mysore Commissionerate
S-1 & S-2, Vinaya Marga
Siddhartha Nagar, Mysore – 570 011

Respondent(s)

Appearance:

Mr. Shyam Narayan, Advocate
Vastra Bhavan Apartments, No. 3A
3rd Floor, No. 64, 4th Main
Malleshwaram
Bangalore – 560 055
Karnataka

For the Appellant

Mr. Madhupsharan, Assistant Commissioner (AR)

For the Respondent

Date of Hearing: 27/03/2018
Date of Decision: 27/03/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20462 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 03.10.2017 vide which the Commissioner (Appeals) has rejected the appeal of the appellant on time-bar. Briefly the facts of the case are that the appellants are engaged in the manufacture of excisable goods falling under Chapter 76 of Central Excise Tariff Act 1985. The appellant manufactured and removed excisable goods to HAL without payment of Central Excise duty claiming exemption under Notification No. 63/95 CE dated 16.03.1995 based on the duty exemption certificate issued by M/s Hindustan Aeronautics Ltd., Bangalore during the period October 2008 to December 2012. The appellants were issued a show-cause notice dated 08.01.2014 demanding duty of Rs. 43,07,650/- (Rupees Forty Three Lakhs Seven Thousand Six Hundred and Fifty only) to be paid on clearances made by them for the period October 2008 to December 2012 by irregularly availing the benefit of Notification No. 63/95 dated 16.03.1995 demanded under the extended proviso to Section 11A (4) of Central Excise Act 1944 along with interest and penalty. Appellant consequently paid an amount of Rs. 29,79,860/- (Rupees Twenty Nine Lakhs Seventy Nine Thousand Eight Hundred and Sixty only) towards duty payable for the period from 01.01.2012 to 31.12.2012 even before the issue of show-cause notice along with applicable interest of Rs. 2,72,908/- (Rupees Two Lakhs Seventy Two Thousand Nine Hundred and Eight only). After following the due process, the adjudicating authority confirmed the demand for the period from 01.01.2012 to 31.12.2012 and dropped the demand for the extended period as time-barred. However there was a calculation error in the confirmed demand of Rs. 31,66,323/- (Rupees Thirty One Lakhs Sixty Six Thousand Three Hundred and Twenty Three only) as the Department had calculated the rate of duty @12.36% ad-valorem in respect of invoices pertaining to the period from January 2012 to 01.03.2012 instead of applicable duty @10.30% ad-valorem. As far as interest is concerned, it was held that no interest is payable. Aggrieved by the dropping of the demand of interest, the Department filed an appeal before the Commissioner (Appeals) and the appellate authority vide his order dated 30.03.2017 upheld the Department's appeal and held that the respondent is liable to pay interest. As regards the request of the appellant for correction of duty calculation, the appellate authority did not consider the request on the ground that the assessee had not filed appeal. Thereafter the appellant again requested to the Commissioner for correction of duty demanded due to error made by the Department in computation vide his letter dated 10.04.2017. In reply to the said letter, the Department wrote a letter dated 25.04.2017 though admitted the mistake in calculation but refused to correct the same on the ground that there is no provision in law. Aggrieved by the said refusal, the appellant has filed the present appeal.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts. He further submitted that the appellant paid the duty along with interest before the issue of show-cause notice but there was a calculation error which was pointed out by the appellant. He further submitted that under Notification No. 63/95 CE dated 16.03.1995 during the period from 01.01.2012 to 16.03.2012, the duty should have been computed @ 10.30% whereas the Department has computed the liability @12.36%. It is a fact that the rate of duty has changed from 10.3% to 12.36% only w.e.f. 17.03.2012 in terms of Government of India Notification No. 05/2012 CE dated 17.03.2012. He further submitted that the appellant paid the interest also. He further submitted that this computation error was

brought to the notice of the Department at every stage but the Department has admitted the error but refused to correct the same. He further submitted that the present appeal has been filed against the letter dated 25.04.2017 rejecting the request of the appellant to correct the mistake committed by the Department. He further submitted that the Commissioner (Appeals) has wrongly taken the date of the original impugned order as 24.03.2014 and rejected the appeal on time-bar.

4. On the other hand the learned AR reiterated the findings of the impugned order.

5. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant paid the duty along with interest before the issue of show-cause notice but due to calculation error, the appellant paid the excess duty to the extent of Rs. 1,86,463/- (Rupees One Lakh Eighty Six Thousand Four Hundred and Sixty Three only) and he has written various letters from time to time to the Department to correct the calculation error but the Department vide its letter dated 25.04.2017 has accepted the error but they have refused to correct the same and rather the impugned order was passed dismissing the appeal of the appellant on time-bar whereas the fact of the matter is that the assessee has filed the appeal against the letter dated 25.04.2017 refusing to correct the mistake committed by the Department. Further I find that once the Department has accepted the mistake then it was the bounded duty of the Department to correct the calculation error, refusal to do so is not tenable under law and further I find that the Commissioner (Appeals) has wrongly rejected the appeal on time-bar. Therefore, in view of the clear-cut admission of the

Department that there was an apparent mistake of calculation, I am of the opinion that the impugned order is not sustainable and the same is set aside by allowing the appeal of the appellant.

(Operative portion of the order was pronounced
in Open Court on **27/03/2018**)

(S.S GARG)
JUDICIAL MEMBER

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