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

Appeal(s) Involved:

E/20485/2018-SM, E/20494/2018-SM

[Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-103-2017-18 dated 12/01/2018 passed by the Commissioner of Central Tax, Belgaum (Appeals)]

[Arising out of No. BEL-EXCUS-000-APP-MSC-104-2017-18 dated 12/01/2018 passed by the Commissioner of Central Tax, Belgaum]

Jayhind Engineering
Plot No. 1 & 2, Industrial Estate
Udyambag
Belgaum – 590 008
Karnataka

Fluid Dynamics Pvt. Ltd. **Appellant(s)**
Plot No. 156/159, Macche
Industrial Estate, Macche,
Belgaum – 590 014
Karnataka

Versus

Commissioner Of Central Tax
And Central Excise, Belgaum
No.71, Club Road,
Belgaum – 590 001 **Respondent(s)**
Karnataka

Appearance:

Shri. J.N. Somaiya Advocate
328, D-10, Royal Plaza,
Dabholkar Corner, For the Appellant
Kolhapur – 416 001

Shri. Kanipakam Murali,
Superintendent (AR) — For the Respondent

Date of Hearing: 17/06/2019
Date of Decision: 19/07/2019

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

Final Order Nos. 20566 – 20567 / 2019

Per : S.S GARG

These two appeals have been filed by the appellant against the impugned order both dated 12.01.2018 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has upheld the Order-in-Original and rejected the appeal of the appellant. Since the issue involved in both the appeals is identical, therefore both the appeals are taken together for discussion and disposal. The details of the appeals are as under:

Sl. No.	**Appeal No.**	**Order-in-Appeal No.**	**Interest Amount (Rs.)**
1	E/20485/2018-SM	BEL-EXCUS-000-APP-MSC-103-2017-18 dated 12/01/2018	55,403/-
2	E/20494/2018-SM	BEL-EXCUS-000-APP-MSC-104-2017-18 dated 12/01/2018	28,092/-

For the sake of convenience, the facts of Appeal No. E/20485/2018 is taken. Briefly the facts of the present case are that the appellants are engaged in the manufacture of excisable goods i.e. Raw castings and Central Hosing falling under Chapter 73 and 87 of Central Excise Tariff Act, 1985. During the course of audit of the record of the appellant, it was noticed that the appellants have raised supplementary invoices to their customers due to upward revision of cost of goods already cleared. Appellant paid the central excise duty along with education cess and secondary and higher education cess. However, interest on delayed payment of duty was not paid as per the provisions of Section 11AB/Section 11AA of the Central Excise Act, 1944. Accordingly, a show-cause notice dated 18.12.2013 was issued proposing to recover the interest of Rs. 55,403/- (Rupees Fifty Five Thousand Four Hundred and Three only) on the differential duty of Rs. 12,05,025/- (Rupees Twelve Lakhs Five Thousand and Twenty Five only) paid on supplementary invoices. After following the due process, the Joint Commissioner vide Order-in-Original dated 10.11.2015 confirmed the recovery of interest of Rs. 55,403/- (Rupees Fifty Five Thousand Four Hundred and Three only). Aggrieved by the said order, appellant filed appeal before the Commissioner on the ground that the Department cannot issue show-cause notice merely for demand of interest without demanding connected duty and further the goods are cleared at the price at the time of clearance and there is no question of paying interest on subsequent clearances. Appellants also pleaded that there is no suppression of fact involved and if at all interest is to be paid it would be for the normal period. The Commissioner (Appeals) after considering the submissions of the appellants, rejected the appeals of the appellant.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellants submitted that the only issue involved in the present case is demand of interest under Section 11AB of the Central Excise Act 1944 on the differential duty paid through supplementary invoices due to subsequent increase in price of goods by virtue of price escalation clause. He further submitted that there were contradictory decisions on this issue and the Hon'ble Apex Court referred the issue to the Larger Bench of the Supreme Court in the

case of ***Steel Authority of India Ltd. Vs. Commissioner of Central Excise, Raipur – 2015 (326) E.L.T. 450 (SC)*** and the Hon'ble Supreme Court vide its order in the case of ***Steel Authority of India Ltd. reported in 2019-TIOL-204-SC-LB*** has held that interest is payable on the differential duty paid through supplementary invoices. Learned counsel fairly conceded that after the decision of the Apex Court in the case of **Steel Authority of India Ltd**., appellant has no case on merits but he says he has a very good case on limitation and subsequent demand in both the cases is barred by limitation. He further submitted that it is a settled law that time limit as prescribed under Section 11A of the Central Excise Act is also applicable for recovery of interest. For this submission, he relied upon the following decisions:

a. *CCE Vs. TVS Whirlpool Ltd. – 1999 (10) TMI 701*
b. *Kwality Ice Cream Company Vs. UOI – 2012 (281) E.L.T. 507*
c. *CCE Vs. M/s. Vae Vkn Industries Pvt. Ltd. – 2013 (10) TMI-30*
d. *Hindustan Insecticiedes Ltd. Vs. CCE – 2013 (8) TMI-225*
e. *Abhishek Alloys Pvt. Ltd. Vs. CCE, 2016 (11) TMI-514*
f. *M/s. Canara Bank Vs. CCE, 2016 (8) TMI-42*

3.1. He further submitted that extended period of limitation is not invokable when the issue is referred to the Larger Bench. For this submission, he relied upon the following decisions:

a. *Jaiprakash Industries Ltd. Vs. CCE, 2002 (146) E.L.T. 481 (S.C)*
b. *CCE Vs. Charak Pharma P. Ltd. 2012 (278) E.L.T. 319 (Guj.)*
c. *Supreme Lamps Vs. CCE 2015 (327) E.L.T. 525 (Tri.-Del.)*
d. *CCE Vs. Supreme Petrochem Ltd. – 2010 (261) ELT 865*

3.2. He further submitted that in the present case there is no allegation of suppression/misstatement in respect of supplementary invoices and therefore the longer period of limitation is not invokable. He also relied upon the Division Bench decision of this Tribunal in the case of ***Sharavathy Conductors Pvt. Ltd. Vs. CCE - 2017 (1) TMI 537 – CESTAT Bang.***

4. On the other hand the learned AR defended the impugned order and submitted that demand of interest is automatic and there is no need to issue the show-cause notice. He further submitted that the Hon'ble Apex Court doubted the correctness of **SKF India Ltd**. which held the field till 2015 and then referred it to the Larger Bench and the Larger Bench has upheld the demand of interest on differential duty paid through supplementary invoices in the year 2019. He further submitted that there is no period of limitation prescribed for demand of interest under the law.

5. After considering the submissions of both the parties and perusal of the material on record, I find that it is a settled law that time limit as prescribed under Section 11A of the Central Excise Act is also applicable for recovery of interest in view of the decision of the Supreme Court in the case of **TVS Whirlpool Ltd.** cited supra which has been followed by various High Courts in various decisions cited supra. Further I find that in the present case there is no suppression, fraud or collusion and therefore the longer period of limitation is not invokable in the present case. Further I find that since the issue was referred to the Larger Bench because there was conflicting decisions prevailed during the relevant time, therefore extended period of limitation is not invokable in view of the various decisions cited supra. Further I note that the Division Bench of the Tribunal in the case of

Sharavathy Conductors Pvt. Ltd. has held as under:

> *"6.2. Now we turn to the specific argument of the appellant saying that the show-cause notice is hit by time-bar inasmuch as it has been issued on 20.01.2010 for the period June 2007 to December 2007. The learned DR has argued that there is no time limit for issue of notice for recovery of interest. She has relied upon the case of SKH Auto Components Ltd. When we consider the definition of relevant date in Section 11A of the Central Excise Act, we find that the amendment has been carried out w.e.f. 14.05.2015 to the effect that relevant date, in the case where only interest is to be recovered, will be the date of payment of duty to which such interest relates. However the amendment is prospective w.e.f. 14.05.2015 and cannot be applied to the prior period. However, the Hon'ble Apex Court in the case of Commissioner Vs. T.V.S. Whirlpool Ltd. 2000 (119) E.L.T. A177 (S.C) has held as follows:*
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> > *"It is only reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the claim for interest thereon."*
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> *7. Respectfully following the said decision, we hold that when the normal time limit prescribed is one year from the relevant date for recovery of the principal amount, it is reasonable to adopt the same period for recovery of interest as well. Therefore in the instant case, we are of the view that Department should have initiated the proceedings for recovery of interest within a period of one year from the date of filing of monthly returns. Since the show-cause notice for payment of interest has been issued only on 20.01.2010 for recovery of interest for the period June 2007 to December 2007, it will be beyond the period of one year and therefore*

will be barred by limitation. It is also on record that the Department has already issued one show-cause notice invoking the extended period of limitation for recovery of interest for the period upto May 2007. This demand stands quashed by the Tribunal in Final Order dated 23.06.2011."

6. In view of my discussion above, I hold that the appellant is only liable to pay interest for the normal period as prescribed by law whereas in both the appeals substantial period is beyond limitation. For the purpose of computing the interest for the normal period the case is remanded back to the original authority to quantify the interest for the normal period of one year which the appellants will be liable to pay. With this, I dispose of both the appeals.

(Order was pronounced in Open Court on **19/07/2019**)

(S.S GARG)
JUDICIAL MEMBER

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