CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 1605 Of 2012

[Arising out of OIA-51-52/CE/Chd-I/12/ Dated 12.03.2012 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-II]

M/s Swaraj Engines ltd. : **Appellant (s)**
Plot No. 2, Industrial Area, Phase-ix,
Mohali (SAS Nagar) Punjab

Vs

CCE-Chandigarh-I : **Respondent (s)**
C.R. Building, Sector – 17-C

with
Excise Appeal No. 1606 Of 2012

[Arising out of OIA-51-52/CE/Chd-I/12/ Dated 12.03.2012 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-II]

M/s Swaraj Engines ltd. : **Appellant (s)**
Plot No. 2, Industrial Area, Phase-ix,
Mohali (SAS Nagar) Punjab

Vs

CCE-Chandigarh-I : **Respondent (s)**
C.R. Building, Sector – 17-C

APPEARANCE:
Ms. Krati Singh, Shri Aman Singh, Advocates for the Appellant
Ms. Shivani, Authorised Representative for the Respondent

CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

ORDER No. A/60292-60293/2023

Date of Hearing:04.05.2023

Date of Decision:29.08.2023

Per : S. S. GARG

These two appeals are directed against the common impugned order dated 12.03.2012 passed by the Ld. Commissioner (Appeals) of Central Excise, Chandigarh-II whereby the Ld. Commissioner
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(Appeals) has rejected the appeals of the appellant and upheld the order-in-original. As the issue involved in both the appeals is identical, therefore, both the appeals are taken up together for disposal and discussion. The details of both the appeals are given herein below:-

Appeal No.	E/1605/2012	E/1606/2012
Issue	Deduction of interest on receivables from the assessable value	Deduction of interest on receivables from the assessable value
Period	December 2007 to May 2008	June 2008 to September 2008
OIA	51-52/CE/Chd-I/12 dt. 12.03.2012	51-52/CE/Chd-I/12 dt. 12.03.2012
OIO	2-3/CE/ADC/ADT/2010 dt. 30.04.2010	2-3/CE/ADC/ADT/2010 dt. 30.04.2010
SCN	C.No. V(84)JC(P&V)Adj/Chd/39/2008/4266 dt. 30.10.2008	C.No. V(84)JC(P&V)Adj/Chd/39/2008/4266 dt. 30.10.2008
TAX	Rs. 8,88,645/-	Rs. 8,18,461/-
Penalty	Rs. 8,88,645/- under Section 11AC of Central Excise Act, 1944	Rs. 8,18,461/- under Section 11AC of Central Excise Act, 1944

2. Briefly the facts of the case are that the appellant is engaged in the manufacture of engines falling under Chapter 84 of First Schedule of Central Excise Tariff Act, 1985 and cleared their final product on payment of appropriate excise duty. The Appellant receives orders for the finished goods in terms of purchase orders ("POS") placed on the appellant and as per the purchase orders, the credit period of 30 days was offered by the Appellant to the purchasers i.e the time within the purchasers may make the payment to the Appellant. In the purchase orders, it is also mentioned that the value reflected on the purchase orders also includes a specified amount per engine as interest for credit period. While clearing the final products, the appellant pays the

excise duty based on the assessable value i.e. price paid as per the purchase orders after deducting the interest charges for the credit period. Further, the invoice also mentions the fact that the amount charged includes a specified amount as interest for the credit period.

- Show cause notices dated 30.10.2008 & 22.01.2009 were issued to the appellant proposing the demand of excise duty on deduction of interest on receivables from the assessable value.
- The appellant filed detailed reply to the show cause notices controverting the allegations in the show cause notices.
- After following due process, vide common Order-in-Original dated 30.04.2010 entire demand was confirmed alongwith interest and penalty.
- Aggrieved by the said order, the appellant filed appeals before the Ld. Commissioner (Appeals) who vide OIA dated 12.03.2012 upheld the demand of excise duty as confirmed in the OIO.
- Hence, the present appeals.

3. Heard both the parties and perused the records.

4. Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the documentary evidence on record and without following the precedent decisions on the same issue. She further submitted that the deduction of interest on receivable is claimed on the basis of purchase orders and the invoices which clearly mention that the unit price agreed on includes a specified and agreed amount towards interest for credit period. She further submitted that the interest for credit period is inbuilt in the price and therefore, the interest so charged on the invoices are liable be deducted from the

receivables. She also submitted that the definition of transaction value given in Section 4 of Central Excise Act, 1944 is exhaustive; however there is no such mention of interest on receivable which shows that the intention of the legislature is clear regarding the interest charged on receivables in the assessable value for levy of Excise duty. In this regard, she also referred to circulars dated 30.06.2000 and 01.07.2002 issued by Central Board of Excise & Customs. She further submitted that this issue i.e. whether the interest on receivables should be included in the assessable value or not has already been settled by various judgements of the Tribunal wherein it has been consistently held that interest on receivable is admissible to the assessee even when the interest is inbuilt in the price and shown in the invoice. In this regard, she relied upon the following decisions:-

- Raptakos, Brett and Co. Ltd. vs. Commissioner of Central Excise, Mumbai-Ill 2018 (3) TMI 401 (Tri-Mum.)
- A Infrastructure Ltd. vs. Commissioner, Central Goods, Service Tax and Central Excise Commissionerate, Jodhpur 2021 (9) TMI 141 (Tri.- Del.)
- Castrol India Ltd. vs. Commr. Of Central Excise, Chennai 2015 (12) TMI 1158 (SC)

5. She further relied upon the following decisions, wherein it is consistently held that there is no dispute that deduction on interest on receivable shall be admissible to the assessee.

- Government of India vs. MRF Ltd. - 1995 (77) ELT 433 (SC)
- CCE vs. Novopan Industries Ltd. - 2007 (209) ELT 161 (SC).

6. She also submitted that in the Appellant's own case for the period January 2007 to November 2007, the department has allowed

the deduction of interest on receivables vide order-in-appeal no. 102/CE/CHD/2009 and department has not filed any appeal against the said order and therefore, she submitted that the department cannot take different stand for different tax period for the same assessee when there is no change in the position of law.

7. It is her further submission that the Ld. Commissioner (Appeals) in the impugned order has wrongly upheld the demand on the basis that the Appellant has adopted an accounting treatment where interest on receivables are not reported separately in the financial record. She further submitted that the department cannot question the commercial decisions and accounting methods adopted by them, in order to determine the duty and in this regard, she placed reliance on the decision of Firm Foundation & Housing Pvt. Ltd. vs. Principal Commissioner, Service Tax 2018 (4) TMI 613 wherein the Hon'ble High Court set aside the demand of service tax computed on the basis of Profit & Loss account and held that it is irrelevant for the purposes of determination of service tax payable.

8. She further submitted that the impugned order has travelled beyond the show cause notice and therefore, violative of principle of natural justice. She also submitted that the demand of interest and penalty cannot be sustained when the demand of tax itself is not justified.

9. For imposition of penalty, she submits that the issue involved relates to interpretation of law and the appellant was having a bonafide belief that the deduction on interest on receivable was admissible. For this submission, she relied upon the following decision:-

- Nizam Sugar Factory vs. Collector of Central Excise 2006 (197) ELT 465 (SC.)
- Rupali Chemicals vs. Commissioner of Central Excise, Jaipur 2017 (6) GSTL 161 (Tri.-Del.)

10. On the other hand, the Ld. DR reiterated the findings in the impugned order.

11. After considering the submissions of both the parties and perusal of material on record, we find that the only issue involved in the present cases is whether the interest on receivables is to be deducted from the assessable value for payment of duty or not?

We find that the interest on receivables has been deducted on the basis of the purchase orders and invoices wherein it is clearly mentioned that the interest on receivables is on account of credit period and interest for the credit period is inbuilt in the price.

12. Further, we find that the department Circular dated 01.07.2002 also clarified this point. The said clarification is stated herein below:-

Will delayed payment charges be excluded from the transaction value?	**Yes, since " transaction value" relates to the price paid or payable for the goods. In this case the delayed payment charge is nothing but the interest on the price of the goods which is not paid during the normal credit period. However, to be admissible as deduction it should be separately shown or indicated in the invoice and should be charged over and above the sale price of the goods. Attention in this regard is invited to Board's Circular No. 194/28/96-CX dated 29.3.1996 which is still relevant so far as this element is concerned. [Also refer to para 8 of Board's letter F.No.354/81/2000-TRU dt 30.6.2000]**

13. Further, we find that this issue has been considered by various benches of the Tribunal and it has been consistently held that interest on receivables is admissible to the assessee even when the interest is inbuilt in the price in invoice.

14. Further, we also find that in the appellant's own case for the period January 2007 to November 2007, the department has allowed the deduction of interest on receivables vide order-in-appeal cited (supra) and the department has not filed any appeal against the same and the said order has attained finality.

15. Further, we also find that the department cannot demand duty arising due to accounting treatment adopted by the appellant as held in the case of Firm Foundation & Housing Pvt. Ltd. cited (supra) wherein the Hon'ble High Court set-aside the demand of service tax computed on the basis of profit & loss account and held that it is irrelevant for the purposes of determination of service tax payable.

16. With regard to interest and penalty, we hold that when the demand of tax itself is not sustainable, the demand for interest and penalty is not justified.

17. In view of our discussion above, by following the ratio of the decisions cited (supra), we are of the considered view that the impugned order is not sustainable and hence we set-aside the same by allowing the appeals of the appellant with consequential relief, if any, as per law.

(Pronounced on 29.08.2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

G.Y.