CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I (E-HEARING)

Excise Appeal No. 60155 of 2021

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-65-2020 dated 02.03.2020 passed by the Commissioner (Appeals) CGST, Ludhiana]

Super Threading India Pvt Ltd **……Appellant**
C-138, Phase V, Focal Point, Ludhiana

VERSUS

Commissioner of CE & ST, Ludhiana **……Respondent**
GST Bhawan, F Block, Rishi Nagar, Ludhiana

APPEARANCE:

Present for the Appellant: Ms Kanika Malhotra, Advocate

Present for the Respondent: Mr. H. S. Brar. AR

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 60845 /2021

DATE OF HEARING: 25.05.2021
DATE OF DECISION: 25.05.2021

PER ASHOK JINDAL:

The appellant is in appeal against the impugned order wherein interest is demanded on account of delayed payment of duty on supplementary invoice during the period 2009-10 for the period 2008-09 to 2010-11 and penalty was also imposed.

2. The facts of the case are that the appellant cleared the goods during the period 2008-09 and 2010-11. Later on, on revision of the price, the differential duty was paid by the appellant but no interest was paid. An audit was conducted in the year 2012. An objection was

raised directing to the appellant to pay the interest but no interest was paid. Later on, on 03.09.2015, a show cause notice was issued to the appellant for demanding interest on delayed payment of differential duty on supplementary invoices by the appellant by invoking the extended period of limitation. The matter was adjudicated. The demand of interest was confirmed and penalty under Rule 25 of the Central Excise Rules, 2002 was also imposed. Against the said order, the appellant is before me.

3. The ld. Counsel for the appellant submits that in 2012, an audit took place, where the objection was raised for non-payment of interest on delayed payment. But, no show cause notice was issued within one year after audit and the show cause notice has been issued thereafter by invoking extended period of limitation. Therefore, the demand of interest in barred by limitation. She further submits that there were divergent views on the issue by various rulings of the Hon'ble Apex Court as well as the Hon'ble High Courts. In these circumstances, the extended period of limitation is not invokable. To support her contention, she relied on the decision of this Tribunal in the case of *Bhalla Enterprises vs. CCE, Ludhiana vide Final Order No. 61790-61791/2018 dt. 14.03.2018*.

4. On the other hand, the ld. AR opposes the contention of the ld. Counsel and submits that the appellant was required to pay interest on supplementary invoices in the year 2008-10 and at that time the decisions in the cases of *Commissioner Of Central Excise, Pune vs. SKF India Ltd – 2009 (239) ELT 385 (SC)* and *CCE vs. International Auto Ltd – 2010 (250) ELT 3 (SC)* were in force wherein it was held

by the Hon'ble Apex Court that on supplementary invoices, the assessee is required to pay interest on delayed payments for the intervening period. Therefore, they were not in divergent views on the issue and the appellant was required to pay interest. He further submits that as in the self-assessment regime, the appellant was required to pay interest as the day on which they failed to make the payment. To support his contention, he relied on the decision of this Tribunal in the case of *Lakhan Singh & Co. vs. CCE, Jaipur - 2016 (46) STR 297 (Tri. Delhi)* to say that the appellant is required to pay interest and extended period of limitation can be invoked.

5. Heard the parties and considered the submissions.

6. In this case, it is a fact of record that the appellant did not pay interest for the intervening period when they issued supplementary invoices for duty paid thereon. It is also a fact on record that thereafter an audit took place in January-February 2012 for the period 2008-10 and asked the appellant to make the payment of interest for the intervening period, but the appellant did not comply with the said direction. Thereafter, the Revenue was sleeping for more than 3 years and on the morning of 3rd September 2015, a show cause notice was issued to demand interest for the intervening period by invoking extended period of limitation. As it was in the knowledge of the Revenue that the appellant has not paid the interest very well in January-February 2012 despite direction, but no show cause notice was issued to the appellant within one year from the said period. In these circumstances, the show cause notice issued on 03.09.2015 is barred by limitation.

7. Further, I find that whether for the intervening period the appellant is required to pay interest or not?, the said issue has been referred by the Apex Court to larger bench itself in the case of *Steel Authority of India Ltd vs. CCE, Raipur – 2015 (326) ELT 450 (SC)* which shows that there were divergent views of the Hon'ble Apex Court on the issue and the said issue has been finally settled by the Hon'ble Apex Court on 08.05.2019 reported in *2019 (366) ELT 769 (SC).*

8. In these circumstances, relying on the decision of this Tribunal in the case of wherein this Tribunal has observed as under:

> *"4. We find that initially the proceedings against the assessee were dropped by the authorities below as well as by this Tribunal. But, later on, relying on the various pronouncements, the issue has been settled by the Apex Court against the assessee. As this issue was interpretation of SSI Exemption Notification, and there were contrary views on the said issue, in that circumstance, the extended period of limitation is not invokable. The Hon'ble Apex Court has also directed while remanding the matter back to this Tribunal to decide the issue on limitation. Admittedly, in this case, the period involved is 01.04.1994 till 17.10.1997 whereas the show cause notice has been issued on 22.03.1999. In that circumstance, the show cause notice has been issued by invoking extended period of limitation is discussed here in above. We hold that the extended period of limitation is not invokable in the facts and circumstances of this case. As there were divergent views during the relevant period on the issue of benefit of SSI Exemption notification using brand name of other person for different goods. In that circumstance, we hold that the whole of the demand is barred by limitation. In that circumstance, the appeal filed by the appellant is allowed on limitation and we hold that the appeal filed by the Revenue is not maintainable, accordingly, the same is dismissed."*

I hold that the case laws relied upon by the ld. AR are not applicable to the facts of this case and extended period of limitation is not invokable. Therefore, the demand of interest is not sustainable. Consequently, no penalty can be imposed on the appellant.

9. In result, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

RA_Saifi