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

Appeal No.E/351/2012

[Arising out of Order-in-Appeal No.21/2012 (M-I) dt. 13.03.2012 passed by Commissioner of Central Excise (Appeals), Chennai]

Commissioner of Central Excise & ST
Chennai-I — Appellant

Versus

Castrol India Ltd. — Respondent

Appearance :

Shri B. Balamurugan, AC (AR)
For the Appellant

Shri D.Arvind, Consultant
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing : 03.12.2018
Date of Pronouncement : 31.12.2018

FINAL ORDER No. 43170 / 2018

Per Shri Madhu Mohan Damodhar

The facts of the case are that the respondent-assessee are manufacturers of lubricating oils and its allied preparations falling under Chapters 27 & 34 of the Central Excise Tariff Act, 1985. The dispute in the present appeal relates to finalization of provisional assessment in respect of lubricating oils cleared by the factory in bulk to their filling unit for repacking during the period January 2008 to December 2008. Assessee had arrived at the value of stock-transferred goods under Rule 8 of the Valuation Rules, 2000, based on cost of production of such goods. The assessment in respect of such goods is provisional and finalized based on CAS-4 certificate submitted at the end of each year. On verifying invoice-wise worksheet with the CAS-4 certificate, while arriving at the differential duty payable, the assessee had themselves adjusted the excise duty short paid with the excise duty paid in excess for the said period. Department took the view that such adjustments are not permissible. Accordingly, a show cause notice proposing demand of differential duty to the tune of Rs.20,07,335/- with interest thereon and also imposition of penalty under various provisions of law. The original authority vide order dt. 30.11.2009 confirmed the said demand of differential duty with interest. Original authority also held that the assessee is not eligible for refund of the excess duty of excise of Rs.1,03,94,623/- paid by them. In appeal, the Commissioner (Appeals) vide the impugned order dt. 13.11.2013 relying upon the judgment of Hon'ble High Court of Karnataka in the case of *Toyota Kirloskar Auto Parts Pvt. Ltd. Vs CCE LTU Bangalore* [2010-TIOL-10-KAR-CX] set aside the demand of Rs.20,07,335/-. The LAA also noted that assessee had not appealed against the decision of original authority that they are not eligible to get refund as incidence of duty had been passed on, which showed that assessee has accepted the latter's decision. Aggrieved by this order, the Department is before this forum.

2. When the matter came up for hearing, on behalf of the appellant, Ld. A.R Shri B.Balamurugan reiterated the grounds of appeal. He relies upon the

Tribunal's Larger Bench decision in *Excel Rubber Ltd. Vs CCE Hyderabad – 2011 (268) ELT 419 (Tri.-LB)* wherein it was held that adjustment of excess payment of duty towards short payment ascertained at the finalization of assessment, is not absolute and subject to unjust enrichment principles.

3. Per contra, for the respondent-assessee Ld. Consultant Shri D.Arvind submitted that the matter is no longer *res integra* and a number of Tribunal decisions have held, following the ratio laid down by the Karnataka High Court in *Toyota Kirloskar Auto Parts Pvt. Ltd.* (supra), that adjustment of excess payment of duty towards short payment ascertained at the finalization of assessment is not barred.

4. Heard both sides and have gone through the facts.

5.1 We find that the Ld. Consultant is correct in his assertion that the mater is no longer *res integra*.

5.2 In the first place, the decision of the Tribunal's Larger Bench was rendered in the case of *Excel Rubber Ltd. Vs CCE Hyderabad* 2011 (268) ELT 419 (Tri.-LB) was rendered on 30.03.2011. The Larger Bench obviously did not have the benefit of the judgment of the Karnataka High Court in *Toyota Kirloskar Auto Parts Pvt. Ltd.* (supra), which was rendered more than six months later, on 13.10.2011. In any case, we find that the ratio laid down by the Larger Bench in *Excel Rubber Ltd.* was departed with by another Larger Bench of the Tribunal *in CCE & ST Vadodara Vs Panasonic Battery India Co. Ltd.* – 2014 (303) ELT 231 (Tri.-LB). The *Excel Rubber* decision was yet again distinguished by a Third Member Bench of the Tribunal in *Hindustan Zinc Ltd. Vs CCE Jaipur* – 2016 (332) ELT 328 (Tri.-Del.). The majority decision, relying upon the *Toyota Kirloskar Auto*

Parts judgement (supra) held that the decision of the Tribunal in *Excel Rubber* (supra) has no relevance. The majority decision also held as under :

> "It is total duty payable of all the goods which are subject matter of provisional assessment and final assessment which is to be taken into consideration. After taking into consideration duty payable in respect of all goods and duty paid in pursuant to the final assessment order if still the assessee is due in any duty then for short fall in payment of duty the assessee is liable to pay interest."

This very same issue has been subsequently followed by the Tribunal in *Jonas Woodhead & Sons (I) Ltd. Vs CCE Chennai-IV* – 2015 (329) ELT 577 (Tri.-Chennai), *Sangam Spinners Vs CCE Jaipur* – 2016 (344) ELT 623 (Tri.-Del.) and *ESSAR Steel India Ltd. Vs CCE Raipur* – 2017 (3450 elt 139 (Tri.-Del.) .

5.3 We do not find any new grounds or reasons to deviate from the ratio laid down by the aforesaid decisions which, in our view, are on all fours with the facts of the present appeal.

6. In consequence, no merit is found in the appeal of the Revenue for which reason, it is dismissed.

(Order pronounced in Court on 31.12.2018)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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