CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

(1) Excise Appeal No.40783 of 2016

[Arising out of Order-in-Appeal No.44/2016 (CXA-II) dated 29.01.2016 passed by Commissioner of Central Excise (Appeals-II), 26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai 600 034]

M/s.Jonas Woodhead & Sons (India) Ltd. ... Appellant
No.119, Thiruneermalai Road,
Chrompet,
Chennai 600 044.

VERSUS

The Commissioner of GST &
Central Excise, ... Respondent
Chennai Outer Commissionerate,
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040

WITH

(2) Excise Appeal No.40784/2016 (Jonas Woodhead & Sons (India) Ltd.)

[Arising out of Order-in-Appeal No.43/2006 (CXA-II) dated 29.01.2006 passed by Commissioner of Central Excise (Appeals-II), 26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai 600 034]

(3) Excise Appeal No.41152/2017(Jonas Woodhead & Sons (India) Ltd.); (4) Excise Appeal No.41153/2017 (Jonas Woodhead & Sons (India) Ltd.); (5) Excise Appeal No.41154/2017(Jonas Woodhead & Sons (India) Ltd.); (6) Excise Appeal No.41155/2017 (Jonas Woodhead & Sons (India) Ltd.)

[Arising out of Order-in-Appeal No.109-112/2017 (CXA-II) dated 27.02.2017 passed by Commissioner of Central Excise (Appeals-II), 26/1, Uthamar Gandhi Salai, Nungambakkam, Chennai 600 034]

(7) Excise Appeal No.41726/2018 (Jonas Woodhead & Sons (India) Ltd.)

[Arising out of Order-in-Appeal No.110/2018 (CXA-II) dated 19.03.2018 passed by Commissioner of GST & Central Excise, Newry Towers, 2051/1, II Avenue, 12th Main Road, Anna Nagar, Chennai 600 040]

(8) Excise Appeal No.41883/2018(Jonas Woodhead & Sons (India) Ltd.)

[Arising out of Order-in-Appeal No.157/2018 (CXA-II) dated 31.03.2018 passed by Commissioner of GST & Central Excise, Newry Towers, 2051/1, II Avenue, 12th Main Road, Anna Nagar, Chennai 600 040]

APPEARANCE :

Shri N. Viswanathan, Advocate for the Appellant
Shri Harendra Singh Pal, Authorized Representative
Shri M. Selvakumar, Authorized Representative
for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.41294-41301/2024

DATE OF HEARING : 30.09.2024
DATE OF DECISION : 17.10.2024

Per: Shri P. Dinesha

The short and common issue that arises for our consideration in all these appeals is, "whether Revenue is justified in not allowing the adjustment of excess duty paid by the appellant and thereby charging consequential interest"?

2. Heard Shri N. Viswanathan, Ld. Advocate for the Appellant and Shri Harendra Singh Pal and Shri M. Selvakumar, representing the Revenue.

3. We have considered the rival contentions, we have also perused the impugned orders and also the orders of this Bench in the appellant's own case for various earlier periods vide Final Order Nos.40480-40484/2015 dated 20.04.2015 [2015 (329) ELT 577 (Tri.-Chennai)] and Final Order Nos.40745-40746/2024 dated 25.06.2024 which were relied upon by Sri N. Viswanathan.

4. Undisputed common fact as could be seen from the Orders-in-Original is that there is clear finding that the appellant had paid the excess amounts which is also held to be refundable subject to provisions of Rule 7 (6) of Central Excise Rules, 2002. We find that the very same issue has been addressed to and decided by this Bench in favour of the appellant following an earlier order of this very Bench in their own case, wherein it has been held as under :

> "8. In this regard, we find that the assumption of the learned Advocate to be correct inasmuch as, an identical issue has been decided in favour of the taxpayer by this very Bench of the Tribunal in the case in their own case for different periods. Relevant portion is reproduced herein below, for convenience:
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> ... ...

3.2 So far as the moot question of adjustment of excess payment of duty against short payment thereof is concerned, the ratio laid down in the judgment of the Hon'ble High Court of Karnataka (supra) read with mandate of Rule 7 of the Central Excise Rules, 2002, leads to the conclusion that there is no warrant in law to deal with the consequence of each clearance on case to case basis to determine shortage and excess of payment of duty and consequence thereof. The ultimate duty liability of a relevant period is to be determined in final assessment taking into consideration entire clearance of that period in aggregate and if there arises excess payment of duty upon such finalization of making due adjustment, that shall be refundable. Hon'ble High Court examining the issue, in the case of Toyota Kirloskar case (supra) in para 9 of judgment held as under :-

"9. In the instant case, admittedly for certain items the adjudicating authority has held the shortfall in payment of duty after the final assessment order as Rs. 10,63,417/-. In respect of other items, the assessee has paid Rs. 1,77,20,157/- in excess. But before imposing interest, the authority should have deducted the shortfall in the excess payment made. If there is no shortfall in payment of duty, payment of interest does not arise. They have treated the duty payable under two categories. It was found in respect of some items the duty payable after the final order is more than what was paid under provisional assessment. The approach of the authorities in this regard is erroneous, unwarranted and unsupported by any statutory provision. If we keep in mind the principle underlying the provisions, it is only when the duty is due and it is not paid within the stipulated time and the duty is paid thereafter, in order to compensate the revenue, interest is imposed. If that is to be kept in mind, in the instant case, when the assessee has paid a sum of Rs. 1,66,56,740/- excess duty which is entitled to claim refund, he cannot be taxed with payment of excess duty in the form of interest. The entire approach of the department is unreasonable, contrary to the scheme of the Act and negatives the principle underlying these provisions. Therefore, all the authorities were in error in levying and upholding the levy of interest."

5. In view of the above, we are of the view that the denial of adjustment of excess duty paid by appellant and the consequential charging of the interest by the Revenue is not justified. Resultantly, we set aside the impugned orders and allow the appeals with consequential relief, if any, as per law.

(Order pronounced in the open court on 17.10.2024)

sd/-
(VASA SESHAGIRI RAO)
Member (Technical)

sd/-
(P. DINESHA)
Member (Judicial)

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