CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

EXCISE APPEAL NO. 51844/2017

[Arising out of Order-in-Appeal No. 170-171(SM)CE/JPR/2017 dated 11.09.2017, passed by the Commissioner (Appeals), CGST, Jaipur (RAJ)]

WESTERN TRANSFORMERS & EQUIPMENTS PVT LTD. **APPELLANT**
Industrial Area, Mathura Road,
Bharatpur

Vs.

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX , JAIPUR I **RESPONDENT**

APPEARANCE:

Ms Surabhi Sinha, Advocate for the Appellant
Shri Nagender Yadav, Authorised Representative for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION: August 23, 2021

FINAL ORDER No.51776 /2021

PER RACHNA GUPTA

The appellants herein are engaged in manufacture of electric transformers. Initially there was a delayed payment of Central Excise duty amounting to Rs. 30,22,042/- against price variation bills raised in subsequent months during the period from April, 2008 to March, 2009. However, show cause notice bearing No. 263 dated 29.4.2009 was served upon the appellant proposing recovery of non payment of interest amounting to Rs.1,97,485/-

on the said delayed payment. The said proposal was confirmed by Order-in-Original No. 48/2009 dated 30.09.2009. The appeal thereof was rejected vide order of Commissioner (Appeals) dated 8.6.2010. However, this Tribunal vide Final Order No. 50712/2014 dated 14.2.2014 denied the liability of appellant to pay the interest for the delayed payment of Central Excise duty against post price variation. Prior to the said decision an amount of Rs.4,80,215/- was also deposited as interest under protest by the appellant for a period from December, 2005 to October, 2011. After the aforesaid decision of CESTAT dated 14.2.2014, a refund clam of Rs. 6,77,700/- was allowed by Deputy Commissioner of Central Excise Division, Alwar and the said amount was paid to the appellant. The said order, however, got reviewed by Commissioner Central Excise, Jaipur I vide its order dated 4.9.2014. It is thereafter that the impugned show cause notice No. 817 dated 17.7.2015 was issued to the appellant proposing the recovery of erroneously paid refund claim of Rs. 4,80,215/-. The said proposal was confirmed vide Order-in-Original No. 691/2016 -17 dated 05.05.2016. The appeal thereof has been rejected vide Order-in-Appeal No. 170-171 dated 29.8.2017. Still being aggrieved said order is assailed before this Tribunal.

2. I have heard Ms Surabhi Sinha, learned Counsel for the Appellant and Shri Nagender Yadav, Authorised Representative for the Department.

3. Both the parties have brought to the notice the decision of Hon'ble Apex Court in the case of Steel Authority of India Ltd. vs. Commissioner of Central Excise, Raipur reported as [2019 (5) TMI 651 [page 33) vide which the issue regarding liability of the assessee for paying the interest along with the duty difference that has arisen on account of final assessment of the goods post their removal has been confirmed.

4. After hearing and perusing the record of this appeal as well as the aforesaid decision of Apex Court I hold as follows:

In the present case, the appellant's claim for refund of interest as was paid on delayed payment of differential duty paid on price variation bills has been rejected on the ground that since the appellant was liable to pay interest on the price variation amount, he is not liable to get the refund thereof. The Hon'ble Apex Court in the case of Steel Authority of India Ltd. (supra) case has adjudicated the same issue i.e. whether the interest is payable on differential excise duty with retrospective effect that becomes payable on the basis of escalation clause.

The relevant extract of the order is as under:

> "63. We are of the view that the reasoning of this Court in the order referring the cases to us (to this Bench) that for the purpose of Section 11AB, the expression "ought to have been paid" would mean the time when the price was agreed upon by the seller and the buyer does not square with our understanding of the clear words used in Section 11AB and as the rules proclaim otherwise and it provides for the duty to be paid for every removal of goods on or before the 6th day of the succeeding month. Interpreting the words in the manner contemplated by the Bench which referred the matter would result in doing violence to the provisions of the Act and 112 the Rules which we have interpreted. We have already noted that when an assessee in similar circumstances resorts to provisional assessment upon a final determination of the value consequently, the duty and interest dates back to the month "for which" the duty is determined. Duty and interest is not paid with reference to the month in which final assessment is made. In fact, any other interpretation placed on Rule 8 would not only be opposed to the plain meaning of the words used but also defeat the clear object underlining the provisions. It may be true that the differential duty becomes crystalised only after the escalation is finalized under the escalation clause but it is not a case where escalation is to have only prospective operation. It is to have retrospective operation admittedly. This means the value of the goods which was only admittedly provisional at the 113 time of clearing the goods is finally determined and it is on the said differential value that admittedly that differential duty is paid. We would think that while the principle that the value of the goods at the time of removal is to reign supreme, in a case where the price is provisional and subject to variation and when it is varied retrospectively it will be the price even at the time of removal. The fact that it is known, later cannot detract from the fact, that

> the later discovered price would not be value at the time of removal. Most significantly, section 11A and section 11AB as it stood at the relevant time did not provide read with the rules any other point of time when the amount of duty could be said to be payable and so equally the interest. We would concur with the views expressed in SKF case(supra) and International Auto (supra). We 114 find no merit in the appeals. The appeals will stand dismissed.''

5. The question thus has been answered in affirmation while concurring with the previous decision on this issue in **CCE vs SKF** case reported as **[2009 (7) TMI 6 (SC)]** and also in **CCE vs International Auto Ltd**. case reported in **2010 (1) TMI 151 (SC)**.

6. I am of the opinion that the facts of the present case are squarely covered by the aforesaid decision and the aforesaid decision is accordingly binding. Resultantly, I hold that appellant was liable to pay the interest on subsequent price variation with effect from the date of removal of the goods involved. Accordingly, the refund of the amount of interest already paid by the appellant was erroneous.

7. Consequent to the above discussion, I do not find any illegality for infirmity in the order under challenge. Same is hereby upheld and the appeal resultantly is hereby dismissed.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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