CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

EXCISE Appeal No. 50866 OF 2021

(Arising out of Order in Appeal No. 07-08-CRM-CE-JDR-2021 dated 12.01.2021 passed by Commissioner (Appeals), Customs, Central Excise & Central Goods and Service Tax, Udaipur)

M/s. Secure Meters Ltd. ...**Appellant**
RIICO, Bhamashah Industrial Area,
Kaladwas, Udaipur-313003

Versus

Commissioner of Customs, ...**Respondent**
Central Excise & Central GST, Udaipur
G-105, New Jodhpur Industrial Area,
Jodhpur-342003

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APPEARANCE:
Mr. Vineet Sodhani, Advocate for the appellant
Mr. Mahesh Bharadwaj, Authorised Representative for the Respondent

CORAM : HON'BLE Ms. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: **05.05.2022**

FINAL ORDER No. 50417-50418/2022

RACHNA GUPTA

The present appeal disposes of two appeals arising out of the same facts and the Order-in-Appeal being common.

2. The appellants herein are engaged in manufacturing of electric energy meters, gas meters etc. They requested for clearance of their goods from the factory to various branches on provisional assessment basis. After the stock transfer of their finished goods to their branches the appellants requested for finalization of the provisional assessment. The request was accepted vide the adjudicating order no. 11/2014-15 dated 20.11.2015. However, Department observed that the appellant has irregularly availed the facility of provisional assessment on the goods which were not used for further manufacture of excisable goods but cleared to its branch office for research and development outside the factory of production and as free samples. While forming an opinion that in the given circumstances the appellant was not entitled to invoke the provisions of Rule 7 and even Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, that an amount of Rs. 10,39,750/- on the said goods cleared to their various branches during the period from April 2013 to March 2014 was proposed to be recovered from the appellants in accordance of Rule 11 read with Rule 4 of above mentioned Valuation Rules vide the Show Cause Notice No. 2262 dated 19.11.2015 was accordingly served upon appellant proposing said demand to be recovered alongwith interest and imposition of penalty. The

proposal of this show cause notice was confirmed vide order in original no. 45/2020 dated 30.07.2020. Since the show cause notice was issued pursuant to Review Order No. 2/2014-15 dated 23.02.2015, that Commissioner (Appeals) vide Order-in-Appeal No.781-782/2018 dated 18.07.2018 had remanded the matter back to the Jurisdictional Assistant/Deputy Commission of Central Excise to finalize the provisional assessment on the basis of Rule 11 read with Rule 4 of the Valuation Rules instead of invoking Rule 7 of the said rules. Pursuant of the said directions of remand that the Order-in-Original No. 45/2020 dated 30.07.2020 was passed confirming the recovery of an amount of Rs. 10,39,750/- as was proposed by the aforesaid show cause notice. Still being aggrieved an appeal was preferred before Commissioner (Appeals), which, vide Order No. 07-08/2021 dated 12.01.2021 has also been rejected. Being aggrieved the appellant is before this Tribunal.

3. I have heard Mr. Vineet Sodhani, Advocate for the appellant Mr. Mahesh Bharadwaj, Authorised Representative for the Department.

4. The learned Counsel appearing for the appellant has mentioned that both the appeals have been filed praying for setting aside of the impugned Order-in-Appeal on following technical grounds:

(i) During the pendency of the adjudication of impugned show cause notice the appellant has applied under Sabka Vishwas Legacy Dispute Redressal Scheme. The outcome was not finalized but the Adjudicating Authority without waiting for the said outcome has passed the impugned order. It is submitted that Commissioner (Appeals) was not competent to pass the order during the pendency of the appellant's application before the Department for the finalization of the impugned subject matter.

(ii) The adjudication order is otherwise hit by the time line as has been prescribed under Circular No. 1053/2/2017 dated 10.03.2017. In accordance thereof the order would have been communicated to the appellant within one month of the conclusion of personal hearing. It is submitted that the personal hearing was concluded in the month of December (24.12.2020) but the order in hand was communicated much beyond the said stipulated period of one month. The order is therefore liable to be set aside on these two technical grounds in both the appeals.

5. With respect to Appeal No. 50866 of 2021, in addition, it is submitted that the order for said appeal is liable to be set aside on the ground of error in the calculations. It is submitted that the Adjudicating Authority has failed to set off the excess duty already paid by the appellant amounting to Rs.9,38,044.30 as was initially confirmed vide the Order-in-Original No.11/2014-15 dated 20.11.2014. The order under challenge is about recovering the entire amount of differential duty of Rs.10,39,750/- without setting of the aforesaid amount of excess duty paid. Hence, the said the order is liable to be set aside. In view of the submissions, the order under challenge is prayed to be set aside. Both the appeals are prayed to be allowed.

6. Learned DR has acknowledged the submissions of the learned Counsel for the appellant as far as the fact of making excess payment of differential duty amounting to Rs. 9,38,044.30/-. No objection is expressed for setting off the said amount against the differential duty being confirmed and ordered to be recovered vide the order under challenge. However, both the technical grounds raised by the appellant are heavily objected to not to be applicable in the given set of circumstances. Both the appeals are accordingly prayed to be disposed of.

7. After hearing both the parties and perusing the records it is observed that the appellant has no grievance as far as the computation of duty at the time of final assessment of his goods in terms of Rule 11 read with Rule 4 of Valuation Rules instead of Rule 8, thereof. There is no grievance but admission for the differential duty for entire year of 2013-14 to be calculated as Rs.10,39,750/- in appeal no. 50866/2021 and of Rs. 2,04,258/- in appeal no. 50867 of 2021. Simultaneously, it is observed that Department is not disputing that the duty determined for the entire year 2013-14 was Rs.16,30,42,152.80/- and after final assessment it comes to Rs.16,40,82,902/-. There is no denial that instead of the duty amount of Rs. 16,30,43,152.80/- amount of Rs. 16,39,81,197.10/- stands already paid i.e. an amount of Rs.9,38,044.30/- stands already paid in excess by the appellant in Appeal No. 50866 of 2021 and an amount of Rs.47,479/- stands paid in excess in appeal no. 50867 of 2021.

8. I observe that Commissioner (Appeals) has failed to appreciate the said excess payment to have already been made by the appellant and to adjust the same in the differential duty demand of Rs.10,39,750/- in appeal no. 50866 of 2021. In view thereof and the no objection by learned DR for the same it is held that the differential duty in the Appeal No. 50866 of 2021 to be recovered from the appellant is only for an amount of Rs.1,01,705.7/- (Rs.10,39,750/- minus Rs.9,38,044.30/-). The order under challenge confirming the recovery of entire amount of Rs.10,39,750/- is therefore liable to be set aside on this score itself. In Appeal No. 50867 of 2021 the excess payment of Rs. 47,479/- made by appellant has already been set off by Commissioner (Appeals) towards the demand of different duty. Hence, the order is sustainable as far as Appeal No. 50867 of 2021 is concerned.

9. Coming to the technical issues raised with respect to both the appeals, it is held that in the entire scheme of SVLDRS announced vide Finance Act, 2019 there is found no provision requiring the stay of pending proceedings before the Department/Courts/Tribunals during the consideration of the application, if any, filed under SVLDRS Scheme. In absence of such provision, I do not find any merit in the technical argument objecting the competence of Commissioner (Appeals) to adjudicate the appeals during the pendency of the SVLDRS application of the appellant. Similarly, with respect to the time-bar issue as

mentioned in Circular No. 1053/2/2017, it is observed that the relevant para 14.10 of said circular reads as follows:

> *"14.10 Issue and Communication of order: In all cases where personal hearing has been concluded, it is necessary to communicate the decision as expeditiously as possible as but not later than one month in any case, barring in exceptional circumstances to be recorded in the file. The order is required to be communicated to the assessee in terms of provisions of Section 37C of the CEA, 1944."*

10. The perusal thereof shows that no doubt it says that where the personal hearing has been concluded but there is no mention about the adjudication order to be passed after the said personal hearing. The period of one month is for the communication of the decision. The date of conclusion of personal hearing cannot be the relevant date for invoking the said period in case the adjudicating order pursuant to the said conclusion has not been passed. The circular is opined to be ambiguous. Otherwise also there is no provision in entire excise law to fix a time limit of one month from the date of conclusion of personal hearing to communicate the adjudicating order. In absence thereof the impugned circular is opined to not to be considered at least for rejecting the order under challenge on technical grounds.

11. The result of entire above discussion is that both the technical grounds challenging the Order-in-Appeal No. 781-782/2018 dated 18th July 2018 w.r.t. both the appeals are not deemed sustainable grounds to set aside the order. However, the order with respect to Appeal No. 50866 of 2021 since has a calculation error as discussed above, the order of said appeal is

hereby set aside holding that the only liability of the appellant is to pay an amount of Rs.1,01,705.70/- instead of Rs.10,39,750/- as has been confirmed and ordered to be recovered by Commissioner (Appeals). The order-in-appeal w.r.t. appeal no. 50866 of 2021 accordingly is set aside. As far as Appeal No. 50867 of 2021 is concerned since admittedly the calculation error as that of Appeal No. 50866 of 2021 has not occurred in the present appeal, the excess duty paid of Rs.47,479/- has been adjusted in the total demand of Rs.2,04,258/-. No question arises for setting aside the impugned order with respect to Appeal No. 50867 of 2021.

12. As a result of entire above discussion, Appeal No. 50866 of 2021 stands allowed, however, Appeal No. 50867 of 2021 stands dismissed because no other relief is claimed.

(Order dictated and pronounced in the open court)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Bhanu