CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 31.05.2017

Excise Appeal No. 56746 of 2013

(Arising out of order in appeal No. IND/CEX/000/APP/387/12 dated 06.12.2012 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore).

M/s Nicholas Piramal India Ltd. Appellant
Sh. Archit Agarwal, Advocate for the appellant

Vs.

CCE, Indore Respondent
Sh. H. C. Saini, AR for the Respondent

Coram:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 53652/2017

Per: **Ashok K. Arya**:

M/s Nicholas Piramal India Ltd. is in appeal against order in appeal No. IND/CEX/000/APP/387/12 dated 06.12.2012 whereunder duty of Central Ecise amounting to Rs. 10,24,279/- alongwith interest and equivalent penalty has been sustained.

2. Brief facts of the case are that-

(i) The appellant is engaged in the manufacture of P&P medicaments under falling under chapter heading 30 of the Central Excise Tariff. During audit, the Central Excise officers found that the appellant had cleared finished goods namely M&P medicaments valued at Rs.62,76,219/- for exports to Japan and China.

(ii) The said export goods were rejected by the foreign customers and returned back on 15.12.2006 and 15.03.2007 respectively.

(iii) The appellant did not do any further processing on such medicaments and did not re-export the same. The shelf life of the said medicaments expired in June, 2007.

(iv) The appellant neither took any permission for extension for re-export of the same nor paid any Central Excise duty leviable thereon.

(v) The appellant did not intimate the department also about the expiry of shelf life of said medicament.

(vi) The department therefore issued show cause notice for recovery of duty amounting to Rs. 10,24,279/- alongwith interest under Section 11A and 11AB of the Central Excise Act, 1944. The department invoked proviso to Section 11A of Central Excise Act, 1944 as the material facts were not brought to the knowledge of the department.

(vii) The show cause notice was adjudicated vide order-in-original No. 119/2010-11 dated 16.03.2012 by the Additional Commissioner confirming the duty amounting to Rs. 10,24,279/- alongwith interest and equivalent penalty.

(viii) The appellant went in appeal before the Commissioner (Appeals) who sustained the impugned order confirming the duty, interest and penalty.

(v) Therefore, the appellant is now in appeal before the Tribunal.

3. After having carefully considered the facts of the case and submissions of both the sides submitted by ld. C.A., Sh. Archit Agarwal for the appellant and Sh. H. C. Saini, ld. AR for the Revenue, it appears that the main issue herein is what rate of duty is applicable on the subject goods - whether it should be the rate of duty of the day, when the goods were imported or it should be the rate of duty of the day, when the goods were removed/ destroyed in the factory.

4. The facts of the case are in a different class. The goods here initially were meant for export under DEEC scheme. However, the customers in Japan and China rejected those goods and goods were re-imported under Notification No. 94/96-Cus dated 16.12.96, whereunder it is enjoined on the appellant that they would submit transit bond and such bond is to be cancelled on the production of certificate issued by Central Excise about receipt of re-imported goods into the appellant's factory. There is no dispute that re-imported goods reached the factory of the appellant.

4.1 The department is demanding the duty of Central Excise @ prevalent on the day of re-importation of the subject goods, whereas the appellant submits that they paid the duty of Central Excise at the rate of the day, when the goods were destroyed as they could not use the goods after the expiry of the shelf life.

5. The duty of Central Excise is paid, when the goods are removed from the factory. In this case, initial removal of the goods from the factory appears

to be under DEEC scheme and the goods were meant for export. The said goods were re-imported. Once the goods have come back in the country, the duty of Central Excise becomes leviable on their manufacture and removal from the factory for home consumption. It is to be noted that the duty of Central Excise is levied on the manufacture, and the payment of such duty is done at the time of removal as a matter of convenience only. Thus, once the manufacture of goods is complete, the appellant is liable to make payment of duty for the subject goods.

5.1 In this case, after the manufacture of goods and when their shelf life expired, the appellant was not in a position to clear / remove them even for home consumption. Therefore, the appellant chose to destroy the subject goods. They have paid duty of Central Excise @ leviable on the day of destruction. The department's contention that rate of duty applicable in this case should be the duty as applicable when the goods were re-imported appears to be little far-fetched. Once the goods have been allowed to reach the factory premises of the appellant under Notification No. 94/96 dated 16.12.96, the significance of the day of reimportation of the goods is not valid for charging the duty. If the appellant removes such goods for home consumption, by taking necessary permission if required, rate of duty would be applicable for the day when the goods are to be removed for home consumption.

5.2 Consequently, we are of the view that for the present facts the demand of duty would be at the rate as applicable on the day of destruction, when the appellant had chosen to destroy the goods and made the payment of duty to the department. When there is no dispute on the fact of payment of duty made by the appellant payable on the day of destruction there is no further liability of payment of duty of Central Excise against the appellant for the present facts.

5.3. The impugned order has imposed liability of interest as well as penalty on the appellant. However, once we have decided that the appellant has rightly paid the duty on the day of destruction of the goods there cannot be any liability of interest as well as liability of penalty against the appellant.

6. In the result, the impugned order is modified to above effect and appeal is partly allowed in above terms.

(Dictated and pronounced in the open Court).

(Anil Choudhary)
Member (Judicial)

(Ashok K. Arya)
Member (Technical)

Pant