CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 04.08.2017

Appeal No. C/50524/2014-CU[DB]

[Arising out of the Order-in-Original No. Commr/RPR/CEX/100/2013 dated 30.09.2013, passed by the Commissioner of Central Excise, Raipur]

M/s. Radius Corporation Ltd. … Appellant

Vs.

C.C.E. Raipur ... Respondent

Appearance:

Present Shri Dhruv Matta, Advocate for the appellant
Present Shri Govind Dixit, DR for the respondent

Coram: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 56214/2017

Per Justice (Dr.) Satish Chandra:

The present appeal is filed against the order-in-Original No. 100/2013 dated 30.09.2013. The disputed period is Jan 2006 to Oct 2011.

2. The brief facts of the case are that during the period under consideration the appellant had undertaken a project of Integral Pearl Cultivation under 100% EOU scheme. For this purpose, the appellant had imported various items which were supposed to be used for the export of the goods. But the

project could not be started and hence the appellant has paid the duty due on the goods but contested the interest there upon which the Department has not allowed. Being aggrieved, the appellant has filed the present appeal.

3. With the above background, we have heard Shri Dhruv Matta, Advocate for the appellant and Shri Govind Dixit, DR for the respondent.

4. The ld. Counsel submits that the Board has issued the circular no. 473/7/2005 dated 14.02.2006 where the levy of interest of customs duty on warehouse goods could be waived. Ld. Counsel submits that in the instant case the equipment and goods were imported for the purpose of 100% EOU. But due to unforeseen reasons, the project could not be started and there was no question of exporting the goods. He submits that even then, the appellant is entitled for the waiver of interest as per the ratio laid down in the case of ***Business Process Technologis (I) Pvt. Ltd. Vs. CC Bangalore 2010 (262) ELT 371 (Tri-Bang.)*** and in the case of ***Stelfast India Pvt. Ltd. Vs. CC Bangalore 2006 (195) ELT 86 (Tri-Bang.)***. The Ld. Counsel submits that the waiver of interest was requested by the appellant under the bonafide belief. When it is so, then no question of levy of interest arise and duty has already been paid but without any interest.

5. On the other hand, Ld. DR submits that the Hon'ble Supreme Court has passed the order in the case of ***Pratibha Processors Vs. UOI 1996 (88) E.L.T. 12 (S.C.).***

Accordingly, Ld. Counsel for the Department stated that the duty is leviable, is a well known fact to the appellant. When the duty was not paid well in time then the interest is leviable. The appellant intentionally has not paid the interest. So penalty was also leviable.

6. By considering the facts of the case and on perusal of the record, we are of the view that in the instant case no manufacturing activity was carried out, so there was no question of export. The purpose of 100% EOU has been defeated for the unforeseen reasons. Undoubtedly, goods and equipments were imported where customs duty was also not paid. For paying duty belatedly the interest is leviable as per the ratio laid down by the Hon'ble Supreme Court in the case of ***CIT Vs. Sant Ram Mangat Ram Jewellers 264 ITR 564 (SC)***. It may be mentioned that ignorance of law is no excuse as per the ratio laid down by the ***Hon'ble Calcutta High Court in the case of CESC Ltd. Vs. Dy CIT 270 ITR 383 (Cal).***

7. In view of the above, we find no reasons to interfere with the impugned order. Same is hereby sustained and the appeal filed by the appellant is dismissed.

[Dictated and Pronounced in the open court]

(V. Padmanabhan) Technical Member	(Justice Dr. Satish Chandra) President

Bhanu