IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 60146 / 2013
Excise Cross Objection No. 61987 / 2013

[Arising out of Order-in-Appeal No 88/CE/DLH/2013 dated 30.7.2013 passed by the Commissioner (Appeals), Central Excise, New Delhi]

Commissioner of Central Excise Delhi I — **Appellants**

Vs.

AIMIL Pharmaceuticals India Ltd. — **Respondent**

Appearance:
Shri Ubhav Sangraj, AR for the Appellants
Shri R K Philips, Advocate for the Respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)

Date of Hearing /decision: 16.10.2017

FINAL ORDER NO. 57280 /2017 SM

Per Anil Choudhary:

The issue involved in this appeal is whether the learned Commissioner (Appeals) is correct in dismissing the appeal of Revenue holding that they had received the impugned order on 31/08/2012, wherein the subject appeal before him should have been filed on or before 31/12/2012.

2. The brief facts are that in the course of audit of records of the respondent for the period 2007 to 2009, it was observed that the respondent-assessee had defaulted in making the payment of duty for the month of September 2008 as the amount to be paid Rs.55,86,247/- which was to paid by 05/10/2008, only Rs. 1,86,000/- was paid from the Cenvat account and the balance amount Rs. 54,00,247/- was not paid. The said amount was finally paid after delay – Rs. 25 lakhs in the month of June 2009 and Rs. 29,00,248/- in the month of July 2009, along with interest of Rs.5,50,619/-. Further facts are that the respondent- assessee for the period of default during which they used Cenvat credit of Rs.14,77,700/- also paid interest on the same amounting to Rs.2,03,710/-. Under such facts and circumstances, show cause notice dated 02/09/2011 was issued alleging that the respondent-assessee is in default in terms of Rule 8(3A) of Central Excise Rules, 2002 and accordingly, invoking the extended period of limitation, excise duty of Rs.14,77,700/- was proposed to be recovered, which was paid out of Cenvat credit and further penalty was proposed as well as interest of Rs. 2,03,710/-, which as per the SCN was already paid on 04/04/2011.

3. The SCN was adjudicated on contest and the proposed demands were dropped by the Additional Commissioner observing that the respondent-assessee had suo motu deposited the amount of tax in arrear along with interest and further Cenvat credit availed during the period, had also been deposited/ paid along with the interest on the same for the period of default. Further, the assessee had deposited regular returns with the Department and accordingly had made adequate disclosures to the Department not amounting to suppression or fraud and as such, the extended period of limitation was not attracted in the facts and circumstances.

4. Being aggrieved the Revenue preferred appeal before the learned Commissioner (Appeals) who passed the impugned order- "This is the appeal of Revenue being filed beyond the prescribed period of limitation of four months, which was filed only on 23/01/2013 after the limitation period and no plausible explanation for the delay was given".

5. Being aggrieved, the revenue is before this Tribunal in appeal.

6. Heard the parties.

7. Having considered the rival contentions, I find that it is an admitted fact that the respondent-assessee had suo motu paid the amount of duty in arrear with interest as permissible under Rule /Act.

Further, they had also deposited the interest on the Cenvat utilised during the period of default. Further, it is admitted fact that they had filed returns throughout and made adequate disclosures in the same. I find that there is no element of contumacious conduct or suppression of facts. Under such circumstances, I find that extended period of limitation is not invokable. Accordingly, I dismiss this appeal filed by Revenue and uphold the impugned order in appeal. The cross objections also stand disposed of.

(dictated and pronounced in the open court)

(Anil Choudhary)
Member(Judicial)

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