IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 5.2.2018

Appeal No. E/51947/2017-SM

(Arising out of Order-in-Appeal No. 156(SM)CE/JPR/2017 dated 25.8.2017 passed by Commissioner (Appeals), Central Excise & CGST, Jaipur)

M/s Scan Synthetics Ltd. Appellant

Vs.

CCE, Jaipur Respondent

Appearance

Shri Ankit Totuka, C.A. - for the appellant

Shri K. Poddar, D.R. - for the respondent

CORAM: Hon'ble Mr. Ashok Jindal, Member (Judicial)

Final Order No. 50534/2018

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein demand of interest has been confirmed by invoking extended period of limitation.

2. The facts of the case are that during the course of audit for the period Sept. 2006 to October, 2011, it was found that the appellant has availed inadmissible Cenvat credit and on pointing out by the Audit Team on 2.9.2011, the appellant reversed the Cenvat credit. Later on, a show cause notice dated 26.2.2013 was issued to the appellant for demand of interest for the intervening period by

invoking the extended period of limitation. The demand of interest was confirmed by the authorities below. Against the said order, the appellant is before me.

3. The ld. Counsel for the appellant submits that the show cause notice is barred by limitation. Therefore, the demand of interest cannot be confirmed in view of the judgement of the Hon'ble Punjab & Haryana High Court in the case of ***Neel Metal Products Ltd. Vs. CCE -*** 2014 (306) ELT 367 (P&H).

4. On the other hand, the ld. AR oppose the contention of the ld. Counsel and submits that the interest is inbuilt provision and if there is delay in payment of duty or reversal of Cenvat credit, the assessee is required to pay interest. As they have suppressed the fact of availment of inadmissible Cenvat credit, therefore, the extended period of limitation is rightly invoked.

5. Heard the parties. Considered the submissions.

6. The facts of the case are not in dispute that the appellant has reversed the Cenvat credit on 2.9.2011 on pointing out by the Audit team. At the time of reversal of Cenvat credit, the appellant was not asked to pay interest. Later on, the show cause notice has been issued by invoking the extended period of limitation, the same is

barred by limitation as held by the Hon'ble Punjab & Haryana High Court in the case of ***Neel Metal Products Ltd.*** (supra), wherein Hon'ble High Court has observed as under:

> "**8.** Learned counsel for the appellant submits that the present petition is squarely covered in favour of the appellant by the decision of this Court in *M/s. Jai Bharat Maruti Limited's* case (supra) and may be disposed of in the same terms. In the said judgment, it has been held as under :-
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> > "We have heard counsel for the parties, perused the impugned order and find no reason to differ from the opinion recorded by the Delhi High Court in *Hindustan Insecticides Ltd.* v. *Commissioner Central Excise, LTU* (supra). The CESTAT, vide a common order, dismissed appeals filed by the appellant and M/s. Hindustan Insecticides Ltd. The order passed by CESTAT has been reversed by the Delhi High Court, by relying upon judgments in *Kwality Ice Cream Company and Another* v. *Union of India and others* [(2012) 281 E.L.T. 507] and *Commissioner* v. *TVS Whirlpool Limited* [2000 (119) E.L.T. A177 (SC)] and holding that as the period of limitation that applies to recovery of the principal amount shall also apply to the claim for interest thereon, the demand is time barred. The opinion recorded by the Delhi High Court in *Kwality Ice Cream Company and Another* v. *Union of India and others* (supra) was followed by the Punjab and Haryana High Court in *Commissioner, Central Excise Commissionerate* v. *VKN Industries Private Limited* (CEA No. 67/2011 (O&M), decided on 17-4-2012), by holding as follows :-
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> > > "6. There is no dispute that assessee has paid the differential duty on supplementary invoices regularly and has shown the same in the ER-I returns, which were filed regularly before the department, therefore, issuance of show cause notice for interest on the delayed payment should also be within a period of one year as stipulated under Section 11-A of the Act. Therefore, department has absolutely no jurisdiction to issue show cause notice after expiry of the period of limitation for interest on the delayed payment for the period from 2002-03 to 2005-06. Division Bench of Delhi High Court in the case of *Kwality Ice Cream Company and Another* v. *Union of India and Others*, W.P. (C) 14414-15/2006 decided

> on 18-1-2012 has also held that period of limitation, unless otherwise stipulated by the statute, which applies to a claim for the principal amount should also apply to the claim for interest thereon."

A similar view has been taken by the Bombay High Court in Central Excise Appeal No. 116/2011, *Commissioner of Central Excise, Mumbai-III* v. *Supreme Petrochem Limited* and the Gujarat High Court in Tax Appeal No. 56/2011, *Commissioner of Central Excise and Customs, Vadodara-II* v. *Gujarat Narmada Fertilizers Company Limited* [2012 (285) E.L.T. 336 (Guj.)]. The respondents do not allege much less assert that any other period of limitation applies or that short payment was made due to fraud, collusion etc. and, therefore, while following the aforesaid judgments, we find no reason to accept arguments addressed by counsel for the revenue and have no hesitation in holding that period of one year would apply to the present case.

In view of what has been stated hereinabove, we answer the questions of law in favour of the appellant, set aside the impugned order and allow the appeal, in terms of judgment in *Hindustan Insecticides Ltd.* v. *Commissioner, Central Excise, LTU* (supra)."

Learned counsel for the respondent does not dispute the applicability of the above mentioned judgment.

7. Therefore, I hold that in this case the show cause notice is barred by limitation qua demand of interest from the appellant. Therefore, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

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