CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 1173 of 2011
(Arising out of **Order-in-Appeal** No.01/2011(T)(D)CE, dated 25.01.2011 passed by Commissioner of Customs, Central Excise & Service Tax(Appeals), Guntur)

Amara Raja Batteries Ltd., **..** **APPELLANT**
Karakambadi, Cuappah Road,
Renigunta, Tirupati
AP – 517 520.

VERSUS

Commissioner of Central Tax, **..** **RESPONDENT**
Tirupati – GST
No. 9/86, West Church Complex,
Amaravathi Nagar, MR Palli Road,
Thirupathi, Chittor,
Andhra Pradesh – 517 502.

APPEARANCE:
Shri Manoj Niranjan, Advocate for the Appellant.
Shri P. Amresh, Authorised Representative for the Respondent.

CORAM: **HON'BLE Mr. R.MURALIDHAR, MEMBER (JUDICIAL)**
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30130/2023

Date of Hearing:31.05.2023
Date of Decision:31.05.2023

[ORDER PER: R.MURALIDHAR]

The Appellant is a manufacturer of industrial batteries. They are supplying batteries to independent third parties and also to various other parties who were identified by the Amara Raja Power Systems and Amara Raja Electronics. The Department after investigation took the view that the Appellant and these two entities and Appellants are interconnected units, since the Managing Director of Amara Raja Batteries is also Director of the other two entities and two more Directors of Amara Raja Batteries are also Directors of the other two entities. A Show Cause Notice was issued wherein the duty demand was quantified based on the value charged by these two units to the other parties minus the value adopted by Amara Raja Batteries to these units. The Department also established these fact by going through the invoices raised by the Appellant and these two entities. The two entities have admitted before the Lower Authorities that they have not availed any cenvat credit for the batteries received from Amara Raja Batteries and the batteries are directly despatched to the parties as per the directions of these two units. After due process, the Adjudicating Authority dropped proceedings. The Order-in-Original was reviewed by the Department and an Appeal was filed before the Commissioner (Appeals). The Commissioner (Appeals) has set aside the Order-in-Original and confirmed the demand. Being aggrieved the impugned Order-in-Appeal Appellant is before the Tribunal.

2. The Learned Counsel submits that prima facie, the Appellant and the other two entities are not interconnected units. Just because of the fact that the Managing Director of Amara Raja Batteries is also Director of the other two entities and there are two more common Directors, the fact is not established to the effect that they are interconnected units. Therefore, he submits the entire presumption for the proceedings initiated is erroneous and the impugned Order-in-Appeal is liable to be set aside on this count. Further, he submits that even in quantification, the Department has not properly taken the details of sales made directly by Amara Raja Batteries to their parties. In most of the cases it is same as which has been billed to their two entities. He also submits that the Adjudicating Authority has considered all these facts and came to a conclusion that only 0.23% of the sales is to these two entities. Therefore, he justifies the findings of the Adjudicating Authority and submits that the impugned Order-in-Appeal is liable to be dismissed and the present appeal is to be allowed on merits.

3. He also submits that the Show Cause Notice for the period 2003-04 to 2007-08 was issued on 31.10.2008. Since the Appellant as well as the two entities are Public Limited/Private Limited Companies, all their details are available with the Registrar of the Companies and their Balance Sheet and Profit & Loss Account are in the public domain. Therefore there cannot be any allegation of suppression on their part. Therefore the extended period cannot be invoked and confirmed the demand for the extended period is liable to be set aside on account of time bar.

4. The Learned AR submits that based on detailed investigation, the Department has issued Show Cause Notice very clearly establishing that Appellant as well as the two entities are interconnected units and they fall under the definition of interconnected units as per the Section 4(3) Explanation 1 of the Central Excise Act 1944. He further submits that the Appellant has not rebutted the Adjudicating Authority's findings that they are interconnected units.

5. He also submits that from the Annexure-II of the Show Cause Notice, it can be seen that Amara Raja Electronics was charging higher basic price for the independent customers and for the same batteries the Appellant was charging lower price on the two entities. Since the Appellant has clearly admitted that the two entities were not availing the cenvat credit and the batteries were directly been despatched to third parties revenue neutral situation does not arises. This procedure has resulted in the Appellant getting a higher realisation through the interconnected unit on which the Excise Duty payment has escaped. He also reiterated the findings of the Commissioner (Appeals) and submits that the mere fact that the Appellant and other two entities are Private Ltd companies on its own will not allow the Department to come to know about their relationship. Only on account of detailed investigation at the time of audit, the Appellant and other two entities have submitted their records based on which the Department established that they are interconnected units. Therefore, he submits that the benefits of time bar cannot be granted to the Appellant.

6. Heard both sides. As per the facts on record, it is clear that two entities were purchasing batteries from the Appellant and these batteries were directly delivered to the third parties who were identified by these two entities. The Appellant company was billing at a lower rate to the two entities on which Excise Duty was being paid by the Appellant but no cenvat credit was taken by the two entities. These two entities charged higher price on the third parties on which no excise duty was paid. Therefore this is not a case where Revenue neutrality will arise. It is a clear case that Appellant was avoiding Excise Duty payment by charging higher price for the supplies made by their interconnected units. Further, it is seen that from the records the Managing Director of the Appellant is also the Director of the two entities and there are two more common Directors in all the three units. The Appellant has not even contested the fact that they are not interconnected units before the Adjudicating Authority. The Adjudicating Authority has gone into totally different direction by going into the percentage of sales effected, which has no legal basis when the facts are very clear that there is a difference between the value charged by Appellant to these two entities and value adopted by these entities for third parties. Therefore on merits, we do not find any case in favour of the Appellant. The Appeal is dismissed on merits.

7. In respect of the time bar stand taken by the Appellant, we agree with the Learned AR that mere fact that these entities are listed with Registrar of Companies and their Balance Sheet and Profit & Loss Account are with the public domain, the Department cannot come to a conclusion about their relationship. Only on account of detailed investigation, they could establish that different prices have been charged by the Appellant through these entities and these entities were charging higher price from third parties. Therefore, the fact of suppression is also well established. Hence the pleading on account of limitation also fails.

8. The appeal stands dismissed.

(Order dictated and pronounced in open court)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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