

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court – I

Excise Appeal No. 299 of 2012

(Arising out of OIA No. 47/2011 (H-I) CE dt.30.09.2011 passed by Commissioner of
Customs, Central Excise & Service Tax (Appeals-I), Hyderabad)

Aurobindo Pharma Ltd

Sy No.374, Hatnoor Mandal,
Medak District, Telangana – 500 084

.....Appellant

VERSUS

**Commissioner of Central Tax
Medchal - GST**

LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004

.....Respondent

Appearance

Shri D.V. Subba Rao, Advocate for the Appellant.
Shri A. Rangadham, AR for the Respondent.

Coram:

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**

FINAL ORDER No. A/30181/2023

Date of Hearing: 06.07.2023

Date of Decision: 17.07.2023

[Order per: ANIL CHOUDHARY]

The Appellant is manufacturer of bulk drugs. Period of dispute is April, 2009 to September, 2009. During the disputed period, the Appellant cleared goods to its other units. The recipient units captively consumed the goods in further manufacture of their finished dutiable goods.

2. Circular No. 692/8/2003-CX dated 13.02.2003 CBEC and Trade Notice No. 171/2003 dated 26.08.2003 issued under Rule 31 of CE Rules 2002 by Hyderabad Commissionerate, prescribed the method of payment of duty, for such transaction, valuation has to be done under Rule 9 read with Rule 8 of Central Excise Valuation Rules, 2000 and cost certificates have to be prepared for every 6 months (based on historical data).

3. The Appellants discharged duty at the time of clearance based on cost certificate available as on that date. After completion of first 6 months of the year, they have obtained cost certificate based on cost of the immediate past

current period. As there was increase in cost price, they have paid applicable differential duty suo moto, immediately on receipt of cost certificate.

4. There is no dispute on amount of differential duty payable. The dispute is whether interest is payable on differential duty.

5. The Appellant contested the demand of interest primarily on the following grounds:

(a) The duty payable as per instructions is paid and hence there is no short payment of duty at any point of time and hence liability to pay interest does not arise.

(b) The clearances are inter-unit transfers. Their own recipient unit would avail Cenvat credit of any duty paid or payable. Transaction being revenue neutral, interest being compensatory in nature for revenue loss suffered, in the instant issue of interest liability does not arise.

6. Learned Adjudicating Authority and Appellate Commissioner held that interest is payable relying on the following decisions.

a) CCE, Pune vs SKF India [2009 (239) ELT 385]

b) Bimetal Bearings Ltd vs CCE, Chennai [2010 (18) STR 539]

c) Lucas TVS Ltd vs CCE, Chennai [2009 (333) ELT 192 (Tri-LB)]

d) CCE vs International Auto Ltd [2010 (250) ELT 3 (SC)]

7. Appellants submit that interest becomes payable as per Sec 11AB of CE Act for any short payment or non-payment of duty. It implies that there ought to be short payment of duty, as on due date for payment of duty.

8. Sec 3 of CE Act levies Excise duty and it provides for collection of tax in such manner as may be prescribed. Rules prescribe the method of valuation and Circulars and Trade Notice referred above prescribe the method of payment.

9. The duty paid on the date of clearance based on previous period cost Certificate, is as per prescribed method and such duty is admittedly paid within due date prescribed in Rule 8 of CE Rules. Obtaining a fresh cost certificate once in 6 months is also as per prescribed method. When there is increase in cost price, paying differential duty on basis of fresh cost certificate, is also as

prescribed. There is no short payment on these two occasions. Hence, interest liability does not arise.

10. The Hon'ble Mumbai HC in CEAT Ltd 2015 (317) E.L.T. 192 (Bom.) observed that interest levy is substantive provision of law which requires to be interpreted strictly.

11. Reliance placed by lower authorities on cases cited above are clearly distinguishable. In SKF decision of Hon'ble SC, the issue involved is additional consideration realised subsequently on account of sale of goods. Transaction value is the method of valuation and definition of transaction value includes in its fold all amounts receivable on account of Sale. Lucas TVS decision and International Auto Ltd also involve sale transaction only

12. The appellants submit that SKF decision was distinguished by Hon'ble HC of Mumbai in CEAT Ltd 2015 (317) E.L.T. 192 (Bom.). The SLP filed by Department stands dismissed by SC in Commissioner v. CEAT Limited - 2016 (342) E.L.T. A181 (S.C.).

13. The Scope of Hon'ble SC decision in SKF India Ltd case has also to be seen in the context of Hon'ble SC observations at para 8 in SAIL India, 2019 (366)ELT 769 (SC). It is apparent that Hon'ble SC itself made an observation that the issue they are considering is limited to certain facts mentioned therein.

14. The appellants also relies on the following decisions wherein it was held that under provisional assessment mechanism also, Interest liability does not arise when duty is paid before final assessment.

(a) CCE., Bangalore Vs BHEL [2010 (257) E.L.T. 369 (Kar)] The SLP filed by Department stands dismissed by SC in [2015 (318) E.L.T. A155 (S.C.)]

(b) Kalyani Carpentar Special Steels Ltd [2007 (214) E.L.T. 550 (Tri. - Mumbai)]. The appeal against this decision was rejected by Hon'ble HC, Mumbai in [2015 (320) E.L.T. A289 (Bom)]

15. The appellants submit that in the light of above decisions;

a) The Hon'ble SC decision is applicable when differential duty payable is on account of additional consideration for sale transaction;

- b) The decision does not squarely apply to other circumstances of differential duty payable and for provisional assessments also the decision does not apply;

16. The appellants further submit the clearances being inter-unit transfers and their own recipient unit would avail Cenvat Credit of any duty payable, the transaction is revenue neutral. Hence, interest being compensatory in nature for revenue loss suffered, thus the issue of interest liability does not arise. Reliance is placed on the Bayer ABS Ltd., Vs CCE, Vadodara 2008 (226) E.L.T. 386 (Tri. – Ahmd)

17. Imposition of penalty under Rule 25 of CE Rules is not sustainable. Such penalty cannot be imposed in the absence of ingredients of malafide intent to evade duty. No allegation is made against the appellants on this score. Reliance is placed on the following decided issues-

(a) CCE, Hyderabad vs Mahalakshmi Profiles Ltd [2012 (279) E.L.T. 355 (A.P.)]

(b) CC, Customs vs Saurashtra Cement Ltd [2010 (260) E.L.T. 71 (Guj.)]

18. In view of the foregoing, Appellant prayed that the Tribunal may be pleased to set aside the impugned Order and pass such other order or orders as may be deemed fit in the interest of justice. Learned DR for Revenue relies on the Impugned Order.

19. Learned DR further points out that the applicability of interest in the matter of additional consideration pursuant to price escalation have been settled by the Hon'ble Supreme Court in the case of Steel Authority of India Ltd vs CCE, Raipur [2019 (366) ELT 769 (SC)] wherein the Hon'ble Apex Court observed as follows:

"35. We are of the view that the scheme of the Central Excise Act and the Rules are a separate code. Section 11A is a provision for recovery. If there is a non-levy, non-payment, short-levy or short-payment, the same becomes recoverable under Section 11A. If there is any of the four contingencies referred to in Section 11A, then Section 11AB is attracted. The working of the parent Act is intricately intertwined with the rules, the scope of which we have already referred to. Therefore, if the value which is declared by way of self-assessment, by way of Rule 6 and on which the duty is paid is not the full value then under the scheme of Section 11A read with Section 11AB and the Rules, the assessee incurs liability for interest when in a case where there is full value found and it dates back to the date of removal.

36. We have noticed that in this case admittedly that at the time goods were removed the price was not fixed. The assessee was fully conscious of

the fact that it was subject to variation. Assessee must be imputed with knowledge that the value it was declaring was amenable to upward revision. The circumstances were indeed clearly both apposite and appropriate for the assessee to invoke the provisions of Rule 7 and seek an order for provisional assessment. In fact, take the example of manufacturer A and manufacturer B. Both remove goods under contracts which contain escalation clauses. Manufacturer A invokes Rule 7. It seeks permission for removal of goods on provisional assessment. Though an order of final assessment has to be passed within a period of time it is capable of being extended without any time-limit. Manufacturer-A on the basis of upward revision of the price with retrospective effect and acknowledging the value to be the value as provisionally assessed and as enhanced by the escalation arrived at under the escalation clause pays the duty when the escalation comes into effect on the difference in the value under Rule 7. Apart from payment of the differential excise duty manufacturer A becomes also liable to pay interest from the date when the escalation would come into play on the arrival at the higher price having retrospective operation. Manufacturer B in identical facts clears the goods on the basis of self-assessment even though he is fully aware that the value of the goods which is paid is not fixed and is amenable to upward revision. He deliberately chooses not to go in for provisional assessment. Thereafter, he pleads that though he was aware that the value is not fixed and the prices on removal was tentative and was amenable to change since he has paid duty on the tentative value he is not liable to pay interest on the value of the goods on the differential duty which he is admittedly liable to pay. Is it contemplated?"

20. He also relies on the ruling of Coordinate Bench of this Tribunal in the Appellant's own case in Appeal No. E/1/2012 wherein under similar facts and circumstances, vide Final Order No. A/30706/2019 dated 24.10.2019, it was held that – issue whether the Appellant is liable to pay interest on the differential duty which occurred due to escalation in price, has been settled by the decision of the Hon'ble Apex Court in the case of Steel Authority of India Ltd (supra).

21. Having considered the rival contentions, we find that admittedly the Appellant has correctly assessed the value on which duty was paid as the goods were transferred to their sister unit under same management. The said payment of duty is also in accordance with Circular No. 692/8/2003-CX dated 13.02.2003 read with Trade Notice No. 171/2003 dated 26.08.2003 issued by the Hyderabad Commissionerate. Thus, we find that the Appellant has paid the correct duty as per the scheme of the Act read with the Rules. We further find that no case of short payment of duty is made out. It is only when the Appellant obtained fresh cost certificate for the next six months period, and found that there is some escalation in the cost, has suo moto deposited the differential duty though they were not under obligation to pay any additional amount. Further, under the facts and circumstances, whatever duty the Appellant would have paid was available to their sister unit as Cenvat credit. Thus, the situation is wholly revenue neutral.

22. In view of the aforementioned findings, we allow this Appeal and set aside the Impugned Order. The Appellant shall be entitled to consequential benefits in accordance with law.

(Pronounced in the Open Court on 17.07.2023)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)