IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Excise Appeal No.754 of 2012

(Arising out of Order-in-Appeal No.96/Kol.II/2012 dated 04.10.2012 passed by Commissioner (Appeals) of Central Excise, Kolkata II)

M/s Tide Water Oil Company (I) Ltd.
109,Foreshore Road, Howrah-711102

Appellant

VERSUS

Commr. of Central Excise, Kolkata II
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

Appearance:
Shri Rajeev Kumar Agarwal, Advocate for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI RAJU, TECHNICAL MEMBER

FINAL ORDER NO.75654/2021

DATE OF E-HEARING : 25.08.2021
DATE OF PRONOUNCEMENT : 08.10.2021

Per P.K.Choudhary :

The instant appeal has been filed by M/s. Tide Water Oil Co. (India) Ltd against Order-in-Appeal No.96/KOL-II/2012 dated 04.10.2012 passed by the Commissioner (Appeals), Kolkata.

2. Briefly stated, the facts of the case are that the appellant having manufacturing units at various locations across the country, is engaged in the manufacture of lubricating oil and greases classifiable under chapter 2710.90 of the Central Excise Tariff Act, 1985. The said goods have been notified under Section 4A of the Central Excise Act, 1944, for the purpose of MRP valuation. The appellant is discharging payment of central excise duty by valuing the goods on the basis of MRP less prescribed abatement.

Show Cause Notice dated 14th January, 2004, was issued to propose demand of differential duty amount by valuing the goods under Section 4 of the Act on the ground that the goods in bulk packs of 210 Ltr and 180 Ltr. were meant for industrial sale and not retail sale and that the bulk packs were not covered by the provisions of the Standards of Weights and Measures Act, 1976 or rules made thereunder and therefore, not covered under Section 4A of the Act. The said SCN was adjudicated vide Order-in-Original dated 30.03.2007 and demand proposed in the SCN was confirmed alongwith interest and penalty.

3. The Ld. Advocate appearing for the appellant disputed the SCN issued by invoking the extended period of limitation. He submitted that the identical issue has been decided in favour of their sister unit at Chennai wherein it has been held that goods are required to be valued under Section 4A of the Act. He further submitted that there cannot be any question of fraud or suppression for the reason that the Central Excise Department both at Chennai and Mumbai Commissionerate have taken a view that goods are required to be valued under Section 4A of the Act inasmuch as Rule 13 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 is clearly applicable in the present case. He referred to the observations made by the Ld. Jt. Commissioner, Chennai in Order dated 30.11.2004 for the identical period in dispute in case of their factory located in Chennai. He further submitted that where divergent views are being taken by the Revenue for appellant's other manufacturing units, the allegation of suppression is untenable. The Ld. Advocate also submitted copies of classification lists filed under Rule 173B enclosing the list of products manufactured wherein it has been disclosed that the said goods would be valued under Section 4A. He submitted that mere non-payment of demanded duty cannot be held as a reason of fraud or suppression so as to justify invocation of extended period of limitation.

On merits, he submitted that their case is covered by the decision of the Tribunal in the case of **CCE vs. Arvind Footwear Pvt Ltd 2017 (348) ELT 510 (Tri-Mum)**, wherein it has been held that the goods supplied in bulk for industrial use on which MRP is stated would be valued in terms of Section 4A of the Act, in case the said goods are notified under the said section. He accordingly submitted that since the goods in question (lubricants) have been notified under Section 4A and MRP is required to be affixed on the packages, the valuation has been correctly done by the appellant in terms of Section 4A of the Act and the department's contention to raise the impugned demand is not sustainable.

4. The Ld. Departmental Representative for the Revenue submitted that the decision in the case of Arvind Footwear (Supra) is not applicable to the instant case since the same is distinguishable on facts. He also submitted that although the declaration has been filed by the appellant enclosing the product lists but the size of said products was not stated therein. He accordingly submitted that the said declaration would not come to the rescue of the appellant. He prayed that the appeal filed by the assessee be rejected being devoid of any merit.

5. Heard both sides through video conferencing and perused the appeal records.

6. We find that the instant issue can be decided on limitation itself. We have carefully perused the Adjudication Order dated 30.11.2004 passed by the Ld. Jt. Commissioner, Chennai, for the similar period wherein it has categorically been held that goods in question removed in bulk for industrial purpose would be required to be valued under Section 4A i.e. MRP valuation. In that case also, the proceedings were initiated by issuing Show Cause notice to propose valuation under Section 4 on the ground that goods cleared in bulk could not be valued under Section 4A of the Act, which was subsequently dropped by the Ld. Jt. Commissioner, Chennai. In para 18 of the said order, it has been duly noted that the Superintendent of Central Excise, Range VIII, Chembur-I Division, Mumbai III Commissionerate, has vide letter dated 22.12.2000 directed the assessee's Mumbai Unit to assess the subject goods under Section 4A instead of Section 4 of the Act. Accordingly, the charge of suppression sought to be levelled against the Chennai unit was set aside by the Ld. Jt. Commissioner, Chennai, taking note of the guidance given by Mumbai Commissionerate.

7. At the stage of the first appeal before the Ld. Commissioner (Appeals), Kolkata, the appellant relied on the aforesaid adjudication order passed by the Chennai Commissionerate. In this regard, the Ld. Commissioner (Appeals) in the impugned order has noted that *"The*

appellant has submitted to me during the personal hearing a copy of the order dated 30.11.2004 of JC, Central Excise, Chennai – I. Without commenting on merit of the order, I only add that the said order is not binding on me while deciding the present case as Commissioner (Appeals), Kolkata – III"

8. We find that when there are clear directions from the excise authorities from Chennai and Mumbai Commissionerate to value the goods under Section 4A in respect of factories located in respective jurisdictions, there cannot be any reason to hold in the instant case that the appellant's Kolkata factory, which is owned by the same legal entity, has deliberately resorted to value the goods under Section 4A as against Section 4 of the Act. Further, no evidence has been adduced to show that the appellant has wilfully resorted to value the goods under Section 4A to evade payment of demanded duty amount. A general averment has been made in the SCN that the appellant suppressed the actual assessable value to justify invocation of extended period of limitation.

9. In view of the above discussions, the impugned order cannot be sustained and the same is set aside. Since we have decided the issue on limitation, we refrain from making any observations in respect of the merits of the case.

10. The appeal is allowed with consequential relief as per law, if any.

(Pronounced in the open court on **08.10.2021**)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(Raju)
Member (Technical)

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