

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.1

Excise Appeal No.552 of 2011

(Arising out of Order-in-Original No.19/Commr./BOL/11 dated 18.03.2011 passed by Commissioner of Central Excise, Bolpur.)

M/s. Jai Balaji Industries Limited

(Unit-I, G1, Mangalpur Industrial Estate, Bakhtiarnagar, Raniganj-713321, District-Burdwan, West Bengal.)

...Appellant

VERSUS

Commissioner of Central Excise, Bolpur

.....Respondent

(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

WITH

(i) Excise Appeal No.853 of 2011 (M/s. Jai Balaji Industries Limited (Unit-III) Vs. Commissioner of Central Excise, Bolpur);
(ii) Excise Appeal No.854 of 2011 (M/s. Jai Balaji Industries Limited (Unit-III) Vs. Commissioner of Central Excise, Bolpur);
(iii) Excise Appeal No.976 of 2011 (M/s. Jai Balaji Industries Limited (Unit-II) Vs. Commissioner of Central Excise, Bolpur);
(iv) Excise Appeal No.289 of 2012 (M/s. Jai Balaji Industries Limited (Unit-II) Vs. Commissioner of Central Excise, Bolpur);
(v) Excise Appeal No.290 of 2012 (M/s. Jai Balaji Industries Limited (Unit-II) Vs. Commissioner of Central Excise, Bolpur);
(vi) Excise Appeal No.291 of 2012 (M/s. Jai Balaji Industries Limited (Unit-II) Vs. Commissioner of Central Excise, Bolpur);
(vii) Excise Appeal No.292 of 2012 (M/s. Jai Balaji Industries Limited (Unit-II) Vs. Commissioner of Central Excise, Bolpur);
(viii) Excise Appeal No.293 of 2012 (M/s. Jai Balaji Industries Limited (Unit-II) Vs. Commissioner of Central Excise, Bolpur);
(ix) Excise Appeal No.542 of 2012 (M/s. Jai Balaji Industries Limited (Unit-IV) Vs. Commissioner of Central Excise, Bolpur);
(x) Excise Appeal No.543 of 2012 (M/s. Jai Balaji Industries Limited (Unit-III) Vs. Commissioner of Central Excise, Bolpur);
(xi) Excise Appeal No.545 of 2012 (M/s. Jai Balaji Industries Limited (Unit-IV) Vs. Commissioner of Central Excise, Bolpur)

***Excise Appeal Nos.552, 853, 854, 976 of 2011
AND
Excise Appeal Nos.289, 290, 291, 292, 293, 542, 543 & 545 of 2012***

(i & ii) (Arising out of Order-in-Appeal No.89./BOL/11 dated 13.07.2011 passed by Commissioner(Appeal-IV) of Central Excise, Kolkata.)

(iii) (Arising out of Order-in-Appeal No.128/BOL/11 dated 15.09.2011 passed by Commissioner(Appeal-IV) of Central Excise, Kolkata.)

(iv to viii) (Arising out of Order-in-Appeal No.47/BOL/12 dated 24.02.2012 passed by Commissioner(Appeal-IV) of Central Excise, Kolkata.)

(ix) (Arising out of Order-in-Appeal No.138/BOL/12 dated 23.05.2012 passed by Commissioner(Appeal-IV) of Central Excise, Kolkata.)

(x) (Arising out of Order-in-Appeal No.135/BOL/12 dated 23.05.2012 passed by Commissioner(Appeal-IV) of Central Excise, Kolkata.)

(xi) (Arising out of Order-in-Appeal No.137/BOL/12 dated 23.05.2012 passed by Commissioner(Appeal-IV) of Central Excise, Kolkata.)

APPEARANCE

Shri A.K.Prasad, Advocate for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75779-75790/2023

DATE OF HEARING : 15 June 2023
DATE OF DECISION : 22.06.2023

Per : ASHOK JINDAL :

The Appellant is a manufacturer of iron and steel products namely Sponge Iron, Pig Iron, Silico Manganese, Ferro Manganese, Ferro Silicon, MS ingots, Billets, Steel Bars/Rods, MS Rounds and TMT bars and have 5 different units. In some of the cases, finished products of one unit is input for another unit and it has been captively consumed. All the units of the Appellant sell their finished goods to independent buyers at factory gate and also stock transfer to their sister units. In respect of sales of independent buyers, the appellant was paying duty on transaction value in terms of Section 4(1)(a) of the Central Excise Act, 1944. In respect of finished goods which were transferred to their other units, the appellant were paying duty on the value on which sales

were made to independent buyers in terms of Rule 4 of Central Excise Valuation Rules, 2000. However, the appellant during the period 2006-07 to 2008-09 in respect of unit located at G-1, Mangalpur Industrial Estate, Bakhtiarnagar, Raniganj-713321, West Bengal started paying duty on stock transfer on the basis of 110% of the cost of production determined as per CAS-4 in terms of Rule 8 of Valuation Rules, 2000. The adoption of a different system of valuation in respect of stock transfer resulted in the appellants being required to pay additional duty. The appellant paid the additional duty by issuing supplementary invoices in the name of other units who took CENVAT Credit of the differential duty paid by the said unit. But no interest was paid.

2. In respect of other units, the appellant during the period April 2007 to June 2010 were paying duty in respect of stock transfers on the basis of Rule 4 of the Valuation Rules, but in these cases Revenue did not insist the payment of duty in accordance with Rule 8 i.e. 110% of the cost of production as per CAS-4. However, the payment of duty in respect of such stock transfers was delayed by the appellant as determining the value of the largest aggregate quantity of the identical goods cleared to independent buyers took some time. But no interest was paid.

3. In respect of unit located at Lenin Sarani, Dist: Burdwan, Durgapur-713210 the demand of differential duty in accordance with Rule 8 of the Valuation Rules, 2000 was necessitated because of belated increase in the cost of raw materials and also because there were no sales of the same goods to independent buyers at the factory gate. This differential duty was paid by the appellant even before issuance of show cause notice. But no interest was paid.

4. The Revenue is of the view that in all the cases where either supplementary invoices has been issued or payment of duty has been paid with a delay on their stock transfers, the appellant is liable to pay interest on the said differential duty for the intervening period. During the whole period total 12 show cause notices were issued to the

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appellant for demand of interest for the intervening period. Although in reply to the show cause notices the appellant contested even payment of duty, but the demand of interest was confirmed and penalties were also imposed. Against the said orders, the appellant is in appeals.

5. For better appreciation of the facts and details of the appeals, a chart is prepared which is as under:-

Sl. No	Unit	SCN No.& Date	O.I.O No.& Date	O.I.A No. & Date	Appeal No. before CESTAT	Period involved	Amount of Duty Involved (RS)	Amount of Interest (Rs)	Product involved	Valuation Rule Invoiced in the SCN
1	I	44/commr / Bol/10dt.10.9.10	19/Commr/Bol/11Dt. 18.03.11	NA	Appeal No.E/552/2011	2006-07 to 2008-09	6,42,88,625	1,26,23,235/-	Sponge Iron, Ferro/Silico manuganese, Pig Iron	8
2	I	06/ADC/BOL/10 dt. 16.09.10	13/ADC/BOL/11Dt. 24.01.11	OIA No.81/Bol/2011 Dt.15.09.11	Appeal No. E/854/2011	2009-10	24,10,389	Not quantified	Sponge Iron, Ferro manganese, silico	4
3	II	5/2010-11 dt.04.05.10	11/DC/JBI(U-II) DGP-I/10-11Dt.24.10.2010	OIA No. 128/Bol/2011 Dt.15.09.11	Appeal No. E/976/2011	Apr'09 to June 09	2,05,757	Not quantified	M S Billets	4
4	II	12/2010-11 dt.30.08.10	05/AC/DGP-I/11-12Dt.04.08.2011	OIA No.47/Bol/2012 Dt.24.02.12	Appeal No. E/289/2012	Aug '09& sep'09	17,898	Not quantified	MS Billets	4
5	II	17/AC/DGP-I/2010-11 Dt. 13.10.10	04/AC/DGP-I/2010-11dt.13.1010	04/AC/DGP-I/11-12 Dt. 12.07.2011	OIA No.51/bol/2012 Dt. 24.02.12	Appeal No. E/293/2012	2009-10	5895/-	Not quantified / Non-alloy steel Ingots	8

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6	III	46/ADC/BOL/10dt.09.12.10	106/ADC/Bol/11Dt.13.07.2011	OIA No.135/Bol/2012Dt.23.05.12	Appeal No. E/543/2012	2007-2008	57,44,419/-	8,47,164/-	Pig Iron	4
7	III	40/JC/BOL/10dt. 18	94/JC/Bol/10Dt.08.10.2010	OIA 89/BOL/2011Dt. 13.07.11	Appeal no. E/853/2012	April'09 to Sep'09	21,03,511	Not quantified	Pig Iron,MS Billets,Ferro waste and scrap& Alloy Billet	4
8.	III	13/2010-11dt.01.11.10	05/AC-05/JBIL/R-4/DGP-II/11-12Dt.21.06.2011	OIA No.50/Bol/2012Dt.24.02.12	Appeal No.E/290/2012	Oct'09 to Dec'09	77,235/-	Not quantified	Pig Iron,MS Billet & Alloy Billet	4
9.	III	43/ADC/BOL/10 dt.03.12.10	107/ADC/Bol/11Dt.13.07.2011	OIA No.48/Bol/2012Dt.24.02.12	Appeal No.E/292/2012	Jan'10 to March'10	8,61,673/-	Not quantified	Pig Iron,MS Billet, Alloy Billet & Non-Alloy Billet	4

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10	IV	14/2010-11 dt.03.11.10	08/AC- 08/JBIL (U- IV)R-4/DGP- II/11-12 Dt.24.08.20 11	OIA No.49/ Bol/2012 Dt.24.02.12	Appeal No.E/291/ 2012	Oct'09 to Dec'09	4,91,707/-	Not quantifie d	Silico Mangan ese, TMT Bar & Sponge Iron	4
11	IV	19/2010-11 dt.18.01.10	10/AC- 10/JBIL (U- IV)R-4/DGP- II/11-12 Dt.12.10.20 11	OIA No.137/ Bol/2012 Dt.23.05.12	Appeal No.E/545/ 2012	Jan.' 10 to Mar.' 10	2,39,084	Not quantifie d	Silico Mangan ese, TMT Bar & Sponge Iron	4
12	IV	05/2011-12 Dt.09.05.11	15/AC- 15/JBIL (U- IV)/R- 4/DGP- II/11-12 Dt.12.10.20 11	OIA No.138/ Bol/2012 Dt.23.05.12	Appeal No.E/542/ 2012	April' 10 to June' 10	2,45,463/-	Not quantifie d	Silico Mangan ese, TMT Bar & Pig Iron	4

6. With regard to Appeal No.E/552/2011, it is the submission of the Ld.Counsel that Appellant was clearing goods to independent buyers at factory gate and also selling the goods to their sister concern for captive consumption therefore the goods which are sold for transfer to sister concern unit for captive consumption would be as such at the same value at which the goods were sold to independent buyers are

assessed. In respect of this contention he relied on the decision of the Larger Bench of this Tribunal in the case of Ispat Industries Ltd. v. Commissioner of C.Ex., Raigad [2007 (209) ELT 185 (Tri.-LB)]. Therefore, it is his contention that as no duty was payable by the appellant, therefore, the question of payment of interest on such additional duty does not arise. It is his contention that although they have paid duty on the persistent of the respondent, but if it is assumed that the change in practice for valuation of stock transfer was adopted by the appellant on their own volition i.e. voluntarily, the appellant cannot now be compelled to accept the situation which was legally incorrect. If the system adopted by the Appellants either on their own volition or on insistence by the department was not legal, department cannot compel the appellant to perpetuate the illegality. In regard to whatever duty was to be paid by the appellant, the same is entitled to Cenvat Credit to appellant themselves. In that circumstances, the whole exercise was revenue neutral therefore the appellant is not liable to pay interest.

7. With regard to Appeals mentioned at Sl.No.2-12, it is the contention of the appellant that although differential duty was paid with a delay, but the same was entitled to Cenvat Credit to their sister unit as it is a revenue neutral situation as held by the Larger Bench of this Tribunal in the case of Jay Yuhshin Ltd. v. CCE, New Delhi [2000 (119) ELT 718 (Tribunal-LB)] therefore duty is payable by the appellant in case of revenue neutral situation, so question of payment of interest does not arise.

8. He further submits that demands are time barred as there was no misstatement or suppression of facts on the part of the appellant, therefore, extended period cannot be invoked. In view of the above submissions, he prayed that the impugned orders are to be set aside qua demanding interest and imposing penalty on the appellants.

9. On the other hand the Ld.AR for the department submitted that when duty is paid on supplementary invoices, the appellant is liable to

pay interest. Therefore, the demand of interest is rightly confirmed against the appellant. To support his contention he relied on the decision of this Tribunal in the case of Indoworth (India) Ltd. Vs. CC & CE, Nagpur[2011 (22) STR 197 (Tri.-Mumbai) which was affirmed by the Hon'ble Bombay High Court as reported in 2012 (27) STR 3 (Bom.)

10. Heard the parties, considered the submissions.

11. The facts of the case are not in dispute that in appeal mentioned at Sl.No.1, the appellant paid duty on the strength of supplementary invoices in terms of valuation adopted in terms of Rule 8 of the Valuation Rules, 2000, but the Appellant was clearing goods to independent buyers also and in other cases, the differential duty was paid by ascertaining late the value of largest aggregate quantity of identical goods cleared to independent buyers.

12. The moot question arises that as in appeal mentioned at Sl.No.1, whether the appellant was liable to pay duty or not in a case where they are selling goods to their independent buyers as well as to their sister units. The answer is that appellant is not liable to pay duty in terms of Rule 8 of Central Excise Valuation Rules, 2000. As differential duty was not payable in appeal mentioned at Sl.No.1, the question arises whether interest is payable by the appellant or not. We find that similar issue was examined by the Hon'ble Gujarat High Court in the case of CCE & C, Vadodara-II v. Gujarat Narmada Fertilizers Co.Ltd. [2012 (285) ELT 336 (Guj.)], wherein the Hon'ble High Court observed as under :-

"11. In the present case, when the period of limitation had already expired and when the extended period beyond one year was not available to the department as held by the Commissioner himself in his order-in-original, to our mind the respondent was not liable to pay even the basic duty. But for the respondent voluntarily making payment of such duty short-paid, it was not open for the Department to recover the same under sub-section (1) of Section 11A of the Act. In absence of any such voluntary payment, recovery of the unpaid duty would not have been possible. In that view of the matter, we do

not find the case would fall under sub-section (2B) of Section 11A of the Act. Sub-section (2B) of Section 11A of the Act applies in a case where there is voluntary payment of unpaid duty before issuance of show cause notice under sub-section (1) of Section 11A. When the provision refers to show cause notice, it means a show cause notice which could have been validly issued and surely not a notice which had become time-barred. If by efflux of time and in absence of availability of extended period of limitation, such show cause notice itself had become time-barred, any payment made voluntarily by the manufacturer cannot be viewed as one made under sub-section (2B) of Section 11A of the Act.

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13. *Accepting the stand of the Department that even in such a case once the payment of duty is made, interest liability would follow would bring about an incongruent situation. The recovery of the unpaid or short paid duty would become time-barred. If the manufacturer does not pay it voluntarily, it would not be possible for the Department to recover the same. But if he does it voluntarily despite completion of period of limitation, he would, further be saddled with the liability to pay statutory interest. Surely, this was not the intention of the Legislature while sub-section (2B) was introduced in Section 11A of the Act."*

13. We have already held that as the appellant was not liable to pay duty in terms of Rule 8 of Central Excise Valuation Rules, 2000, therefore, no interest is payable by the appellant in view of the decision of the Hon'ble High Court in the case of CCE & C, Vadodara-II v. Gujarat Narmada Fertilizers Co.Ltd. (supra). Therefore, the impugned order in Appeal No.E/552/2011 is set aside and the appeal is allowed with consequential relief.

14. For appeals mentioned at Sl.No.2-12, it is the contention of the Ld.Counsel for the appellant that the goods have been cleared by the appellant to their sister unit, wherein whatever duty is paid by the

appellant, the same is entitled as Cenvat credit. In that circumstances, as held by the Larger Bench of this Tribunal in the case of Jai Yuhshin Ltd. (supra), wherein this Tribunal has observed as under:-

"13. In the light of the above discussion, we answer the reference as under:

(a) Revenue neutrality being a question of fact, the same is to be established in the facts of each case and not merely by showing the availability of an alternate scheme;

(b) Where the scheme opted for by the assessee is found to have been misused (in contradistinction to mere deviation or failure to observe all the conditions) the existence of an alternate scheme would not be an acceptable defence;

(c) With particular reference to Modvat scheme (which has occasioned this reference) it has to be shown that the Revenue neutral situation comes about in relation to the credit available to the assessee himself and not by way of availability of credit to the buyer of the assessee's manufactured goods;

(d) We express our opinion in favour of the view taken in the case of M/s. International Auto Products (P) Ltd. (supra) and endorse the proposition that once an assessee has chosen to pay duty, he has to take all the consequences of payment of duty."

We hold that it is a revenue neutral situation.

15. As held by the Hon'ble Gujarat High Court in the case of CCE & C, Vadodara-II v. Indeos Abs Ltd. [2010 (254) ELT 628 (Guj.)], in case the goods were cleared to their own sister concern, which is availing benefit of the Modvat Credit, hence the entire exercise is revenue neutral. Although the appellant paid differential duty later on, but same was available as Cenvat Credit to their sister unit is a revenue neutral situation, if appellant would have not paid differential duty that was not

payable in terms of the above cited decisions. Therefore, as duty was not payable, the payment of interest does not arise in the case of revenue neutral situation. Further the case law relied upon by the Ld.AR for the department in the case of Indoworth (India) Ltd. (supra), is not applicable to the facts of the present case as in that case the appellant sought refund of interest paid on Service Tax which was not payable by the assessee.

16. In view of the above discussion, we hold that it is the revenue neutral situation, no duty is payable by the appellant therefore whatever duty paid by the appellant Cenvat credit of the same has been availed by the sister unit, question of payment of interest does not arise.

In view of the above discussion, the appeals mentioned at Sl.No.2-12 are also allowed by setting aside the impugned orders.

In the result, all the appeals are allowed with consequential relief.

(Order pronounced in the open court on 22.06.2023.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)