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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.70110 of 2013

(Arising out of Order-in-Appeal No.39/CE/B-I/2012 dated 27.11.2012 passed by Commissioner(Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.)

M/s. JSL Limited
(Kalinga Nagar Industrial Complex, P.O. Danagadi, Dist. Jajpur, Odisha.)
...Appellant

VERSUS

Commissioner of Central Excise, Bhubaneswar-I
.....Respondent
(Central Revenue Building, Rajaswa Vihar, Bhubaneswar, Odisha.)

APPEARANCE

Shri Deepro Sen & Ms. Taniya Roy, both Advocates for the Appellant (s)
Shri B.K.Singh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 75264/2024

DATE OF HEARING : 9 February 2024
DATE OF DECISION : 9 February 2024

Per : RAJEEV TANDON :

The appellant has filed the impugned appeal assailing the Order-in-Appeal No. 39/CE/B-I/2012 dated 27.11.2012 passed by Commissioner(Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.

2. The appellant is a manufacturer of High Carbon Ferro Chrome, High Carbon Ferro Manganese and Silico Manganese at their Jajpur Unit. The semi finished goods are stock transferred to their sister unit at Hisar, Haryana, where they are utilized captively in the manufacture of Stainless Steel Slab, Stainless Steel Hot Rolled Coil, Stainless Steel Cold Rolled Coils and Stainless Steel Plate/Sheet which are cleared as

final products upon payment of duty. The period involved in the present dispute concerns April 2006 to March 2009. The short question in the present appeal revolves around the appellant's liability to pay interest on the goods cleared to their sister unit in terms of proviso to Rule 9 read with Rule 8 of the Valuation Rules, 2000, whereby the duty was levied @ 110% of the cost of production determined on the basis of annual CAS-4 certificates/guidelines of stock transferred goods in accordance with CBEC Circular No.692/08/2003-CX dated 13.02.2003.

3. It is the case of the appellant that they arrived at the cost of production of goods stock transferred from their Jaipur unit to the Hisar unit based on annual cost audit reports. They further state that they compared the value on which duty was paid at the time of clearance from the Jajpur unit with the value as arrived at on the basis of CAS-4 certificates on a monthly basis and paid differential duty wherever the valuation as per CAS-4 certificates was ascertained to be higher than the value on which the duty was initially paid. In such cases the appellants raised supplementary invoices on their sister unit at Hisar and has paid duty thereon. They further state that for the months wherein the initial duty payment was in excess vis-à-vis the value as arrived in terms of CAS-4 figures, the same was ignored. They state that they have not filed any refund claims on such duty paid in excess.

4. The department vide letter dated 29.04.2009 called upon the appellant to pay interest as upon verification of records it was noticed that the assessee had paid differential duty of Rs.1,21,14,526/- (April to July 2006) and Rs.4,18,56,578/- (2007-08) and therefore were required to pay Rs.26,74,457/- and Rs.76,06,965/- by way of interest on the said sums. As the appellant disputed the said seeking of interest, the department vide its letter dated 04.11.2010 threatened to take recourse to coercive measures in case of non-compliance and vide letter dated 09.11.2010 confirmed an amount of interest totalling Rs.1,29,77,820/- for the period for which the aforesaid differential duty was paid by the appellant.

5. In appeal filed by the appellant before the Ld.Commissioner(Appeals) no respite was accorded and therefore the appellant is in appeal before us challenging the impugned order of the Ld.Commissioner(Appeals).

6. Amongst the various arguments taken by the appellant were –

- OIO was confirmed without giving any opportunity of being heard;
- Since method adopted by Appellant at the time of clearance is in compliance of Rule 8, therefore, differential duty was not payable;
- Differential duty was not payable as transferee unit (Hisar unit) had already paid duty in PLA;
- For calculation of differential duty liability, the intstances where duty paid by the Appellant was higher than duty payable as per annual CAS-4 should be considered;
- Excess duty paid during any financial year should be adjusted against the short duty paid during the same financial year.

7. In proceedings before us the appellants have submitted that the appropriate way of resorting to duty payment in the present matter was to balance the excess and the shortfall in duty taken at the end of the year, thereafter arrive at duty payment amount, if any. However, instead of so doing they *suo motu* paid the difference in duty as stated above wherein the CAS-4 quantification indicated higher amounts of duty leviable without neutralizing for such months where there was already an excess payment of duty. They further strongly plead that apart from the above it has been settled by courts in a plethora of decisions that interest liability does not accrue in revenue neutral scenarios. It is their case that there is no sale involved of the said goods which were transferred to their sister unit and valuation at 110% as referred above was undertaken of the Ferro Alloys sent to their Hisar plant where it was consumed captively in the manufacture of finished dutiable goods. Thus, it is their submission that for the relevant period,

on the overall there is no duty payable since for certain periods there was excess payment of duty which ought to have been adjusted against their duty allegedly short paid and therefore there was no requirement to pay duty thereon and obviously question of payment of interest in the matter would not therefore arise.

8. We have heard the two sides and also perused the case records.

9. The facts of the case are not in dispute. We find that the only argument that the Ld.Commissioner has been able to make out in his order is the proposition that *"since the value of goods could not be determined at the time of clearance, the appellant could have opted for provisional assessment for delayed payment of duty, interest as automatic and is better considered as compensation"*. For these findings, the Ld.Commissioner has relied upon the Hon'ble Supreme Court's pronouncement in the case of Commissioner of Central Excise v. International Auto Ltd. **[2010 (250) E.L.T. 3 (S.C.)]** and Commissioner of Central Excise, Pune v. SKF India Ltd. **[2009 (239) E.L.T. 385 (S.C.)]**.

10. At the outset it may be pointed out that the aforesaid two situations relied upon by the Ld.Commissioner(Appeals) do not cater to a situation of revenue neutrality and are concerned where price revision had happened and duty short paid was subsequently paid by way of supplementary invoices raised in favour of the customers to whom the goods were sold form the factory gate. There is marked difference with the scenarios and for this reason we are of the view that the aforesaid Supreme Court's decisions are not applicable to the facts of the present case.

11. Reverting to the legal issues, as arising in the present case, we note that it is not deniable that there ought to be an adjustment of excess duty paid against the cases of short payment of duty. However, the appellant is not seeking any such interference at this stage. It is a fact that ignoring duty paid in excess and only considering the duty that has been short paid would lead to an anomalous situation where it would tantamount to retention of undue tax by the Government in clear

violation of the stipulation of Article 265 of the Constitution. We also take note of the fact that various judicial authorities, in slew of cases have allowed the adjustment of duty in matters concerning involvement of CAS-4 valuation, provisional assessments, SSI exemptions etc.. For the sake of records, we may refer to the following case laws:-

a. Hindalco Industries Ltd. v. CCE, Bhubaneswar

[2023 (5) TMI 720 –CESTAT KOLKATA]

b. Hindalco Industries Ltd. v. CCE, Rourkela

[FO No.77236-77239/2023 dated 25.09.2023-CESTAT-KOL]

c. SAIL, Alloys Steel Plant v. CCE, Bolpur

[2023 (5) TMI 861-CESTAT-KOL]

d. Pr. Commr. of CGST & CE v. Godrej Consumer Products Ltd.

[2019 (367) ELT 985 (MP)]

e. Finolex Industries Ltd. v. Commissioner of Customs-Pune

[2023 (5) TMI 306 –CESTAT MUMBAI]

f. Jindal Steel & Power Ltd. v. CCE, Raipur-I

[2016 (342) ELT 253 (Tri.-Del.)]

g. Suzlon Energy Ltd. v. CCE & ST, Vadodara

[2016 (339 ELT 87 (Tri.-Ahmd.)]

h. Vinir Engineering Pvt.Ltd. v. CCE, Bangalore

[2004 (168) ELT 34 (Tri.-Bang)]

i. Angadpal Industries Ltd. v. CCE, Thane-II

[2012 (280) ELT 542 (Tri.-Mum.)]

j. Hindustan Zinc Ltd. v. CCE, Jaipur

[2016 (336) ELT 328 (Tri.-Del.)]

k. Essar Steel India Ltd. v. CCE, Raipur

[2017 (345) ELT 139 (Tri.-Del.)]

12. Coming to the moot aspect of payment of interest and as already pointed out in the context of revenue neutral situation, we take note of the fact that there are series of cases wherein it has been held that in a revenue neutral situation demand for duty does not arise :-

a. Hindalco Industries Ltd. v. CCE, Bhubaneswar-II

[2023 (5) TMI 720-CESTAT-KOLKATA]

b. CCE, Pune v. Coca Cola India Pvt.Ltd.

[2007 (213) ELT 490 (S.C.)]

c. CCE & C, Vadodara-II v. Indeos Abs Ltd.

[2011 (267) ELT A155 (S.C.)]

13. Further, even if the disputed amount of duty is paid by the appellant, question of saddling them with payment of interest clearly does not arise. We refer to the Coordinate Bench's decision in the case of Jai Balaji Industries Ltd. v. CCE, Bolpur **[2023 (6) TMI 1102 – CESTAT KOLKATA]** wherein this Tribunal held that on an issue concerning demand of interest on differential duty arising out of supplementary invoices as differential duty was not payable, question of payment of interest would not arise. Relevant para of the judgement is quoted below:-

"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."

14. To similar effect is the law as laid down by this Tribunal in the case of Steel Authority of India Ltd. v. Commissioner of Central Excise, Bolpur **[2023 (9) TMI 915 – CESTAT-KOLKATA]**. Necessary extract of the said decision is reproduced hereunder:-

"7. The short issue involved in this case is to be decided whether interest is payable on the demand of Central Excise duty, which has been held to be revenue neutral or not ?

8. The ld.A.R. for the Revenue relied on the decision of this Tribunal in the case of Essar Steel Limited (supra), wherein we find that the issue has been decided by the Tribunal is whether there is revenue neutral situation in the facts and circumstances or not, which is not the issue in hand before us. Therefore, the same decision is not relevant to the facts of this case. Excise Appeal No.396/2006 & 914/2011 5

9. We find that it is an admitted fact that it is a case of revenue neutrality, which means whatever duty has been paid by the appellant and the same is entitled as cenvat credit to the appellants themselves.

10. As it is a revenue neutral situation, we hold that no interest is payable by the appellant as held by this Tribunal in the case of Jai Balaji Industries Limited (supra) wherein it has been held as under :

> *"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."*

11. Therefore, we hold that no interest is payable by the appellant as it is a revenue neutral situation. Accordingly, the demand of interest is set aside."

15. To similar ratio is yet another decision of this Tribunal in the case of M/s. H.V. Transmission Ltd. v. Commissioner of Central Excise, Jamshedpur and M/s. Tata Motors Ltd. (Formerly M/s. H.V. Transmission Ltd) (formerly M/s. TML Drivelines Ltd.) v. Commissioner of Central Excise, Jamshedpur **[2023 (12) TMI 118-CESTAT KOLKATA]**.

16. Under the circumstances for reasons discussed above, we are of the view that, in the present matter, no case has been made out by the department. We therefore set aside the order of the lower authority and allow the appeal filed by the appellant with consequential relief, as per law.

(Operative part of the order was pronounced in the open Court.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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