IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/85443/2017

[Arising out of Order-in-Appeal No: PK/153/RGD/2016 dated 30th November 2016 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II.]

Ultra Plus Lubes Pvt Ltd …***Appellant***

versus

Commissioner of Central Excise
Mumbai – II ***…Respondent***

Appearance:

Shri Rajesh Ostwal, Advocate for appellant

Shri SJ Sahu, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 16/04/2018
Date of decision: 16/04/2018

ORDER NO: A/87078 / 2018

The issue in this appeal against order-in-appeal no. PK/153/RGD/2016 dated 30th November 2016 of Commissioner of Central Excise (Appeals), Mumbai – II is the dispute on the amount that was to be appropriated from the deposits made during the course of the proceedings for finalization of assessment.

2. Appellant had been clearing goods on provisional assessment which, upon being finalized by order dated 10th November 2015, was followed with a claim for refund of ₹ 34,64,778/- filed on 29th February 2016. The original authority, while sanctioning the said amount, directed the retention of ₹ 4,78,212/- towards interest liability. The first appellate authority did not find any reason to interfere with the order of the original authority leading to the present appeal.

3. Learned Counsel for appellant submits that the adjudicating authority had erred in computing the interest of ₹ 4,78,212/- and that they had paid ₹ 1,53,628/- during the course of dispute towards interest. It was also contended that even this amount of ₹ 2,79,751/- worked out by the appellant was not liable to be paid in view of the decision of the Hon'ble High Court of Bombay in *CEAT Limited v. Commissioner of Central Excise & Customs, Nashik [2015 (317) ELT 192 (Bom.)]* and affirmed by the Hon'ble Supreme Court, on the manner in which interest liability was to be computed upon finalization of provisional assessment.

4. Heard Learned Authorised Representative.

5. On examination of the deposits/payments/debit of CENVAT

credit account, it is seen that the duty liability, as well as the refund arising in consequence of the finalization of provisional assessment, has been computed correctly; there is no dispute by the appellant on this aspect.

6. However, the interest liability is disputed. It is seen that the appellant had made detailed submissions and furnished computation before the first appellate authority which had not been taken into account or considered. In order to enable this exercise to be carried out, the appeal is allowed by way of remand to the original authority with the direction to confine itself to ascertainment of the amount paid towards interest and consequent amount recoverable as interest in accordance with law.

(Dictated in Court)

(C J Mathew)
Member (Technical)

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