IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I

Appeal No. E/752 to 757/2011
E/CO/116 to 121/2011

(Arising out of Order-in-Appeal No. M-I/AV/65-70/2011 dated 31.01.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I).

Commissioner of Central Excise, Thane-II	Appellant

Vs.

M/s Unicorn Fibro Chemicals Pvt. Ltd.	Respondent

Appearance:

Shri Anil Choudhary, DC (AR)	for Appellant
Shri S.J. Vyas, Advocate	for Respondent

And

Appeal No. E/898 to 903/2011

(Arising out of Order-in-Appeal No. M-I/AV/65-70/2011 dated 31.01.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I).

M/s Unicorn Fibro Chemicals Pvt. Ltd.	Appellant

Vs.

Commissioner of Central Excise, Thane-II	Respondent

Appearance:

Shri S.J. Vyas, Advocate	for Appellant
Shri Anil Choudhary, DC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 19.03.2019

Date of Decision: 19.03.2019

ORDER NO. **A/85587-85598 / 2019**

Per: Dr. D.M. Misra

Heard both sides.

2. These appeals are filed by the Revenue as well as the assessee against the Order-in-Appeal No. M-I/AV/65-70/2011 dated 31.01.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.

3. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of excisable goods namely, Coning Oil (Base Oil) falling under Chapter Heading 2917 and Finishing Agent falling under Chapter Heading 3817 of Central Excise Tariff Act, 1985. On scrutiny of their records, it came to the notice of the Department that they have cleared the excisable goods to the unit situated at Silvasa on payment of duty calculating the assessable value on cost construction method. Alleging that correct assessable value of the goods has not been determined and applicable excise duty not paid, show-cause notices were issued from time to time demanding differential duty from the appellants. Consequently, the differential duty for the period from July, 2000 to September, 2007 totaling to Rs.78,10,874/- has been confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who after considering the

determination of assessable value, applying CAS-4 method, reworked the demand to Rs.13,33,499/- with interest and penalty as Rs.11,93,792/-. Aggrieved by the said order, both Revenue as well as assessees are in appeal.

4. At the outset, learned Advocate Shri S.J. Vyas for the asseessee-appellant vehemently argued that demand of differential duty of Rs.11,93,792/- was confirmed for the period July, 2000 to March, 2005 is partly barred by limitation. It is his contention that while discharging duty in determining the assessable value of stock transferred goods, they have applied the methodology for determination of the cost of the products which was prevalent at that point of time and CAS-4 method was not applied. It is his contention that during the entire period, as observed by the learned Commissioner (Appeals) in para 8 of the impugned order, against the excess duty of Rs.30,86,910/-, for some period they had short paid Rs.13,33,499/-. It is his contention that this shows that there was no intention to evade payment of duty by applying the different method of valuation for stock transferred goods. It is his contention that demands confirmed invoking the extended period is unsustainable in law. Further, he has submitted that in the impugned order, the learned Commissioner (Appeals) has imposed penalty almost equivalent to the amount of differential duty confirmed. He submits that since it is a pure question of interpretation of law and also one of the major demands among the periodical notices issued beyond the period of limitation, therefore, imposition of penalty is unwarranted and unjustified.

5. He has also submitted that the appeals filed by the Revenue are devoid of merit inasmuch as the CAS-4 certificate have been produced before the learned Commissioner (Appeals), who considered the same and accordingly re-worked the assessable value and arrived at the applciable duty. Therefore, non- production of CAS-4 certificate before the adjudicating authority would not in any manner affect the determination of correct assessable value or the duty. The Revenue has not produced any certificate challenging the CAS-4 method adopted by the learned Commissioner (Appeals) in the impugned order as incorrect.

6. Learned AR for the Revenue has reiterated the findings of the learned Commissioner (Appeals) as far as confirmation of demand is concerned. However, on the reduction of the demand as originally upheld by the adjudicating authority, reiterating the grounds of appeal, the learned AR for the Revenue has submitted that the assessee appellant has failed to produce CAS-4 certificate to determine the assessable value before the original authority, hence, the data relating to the same could not be verified. Also, he justifies imposition of penalty as the assessee has not correctly determined the assessable value and correspondingly short paid the duty.

7. Heard both sides and perused the records.

8. We find that short issue involved in the present appeal is whether the appellants are required to discharge duty on the differential value, arrived at after applying the CAS-4 method for the period July, 2000 to Sept, 2007. We find that the first show-cause notice from July, 2000 to March, 2005 has been issued on 03.8.2005 invoking extended period of limitation. From the records, we find that the assessee appellant while clearing the excisable goods to their Silvasa unit, determined the assessable value of the goods on cost construction basis without adopting the CAS-4 method, resulting into short payment of duty. Periodical show-cause notices issued thereafter demanding differential duty from the assessee-appellant. The learned Commissioner (Appeals) while considering the issue examined the CAS-4 certificates produced by the appellant and accordingly, re-determined the assessable value and also the differential duty payable. Merely because, the CAS-4 certificates were not produced before the adjudicating authority, in our opinion, the said determination of value and differential duty cannot be said to be incorrect unless contrary certificate is produced by the Revenue to establish that the said method of determination of assessable value is incorrect or CAS-4 certificate produced by the assessee-appellant is incorrect. Therefore, we find merit in the observation of the learned Commissioner (Appeals) in arriving at the assessable value of stock transferred goods adopting CAS-4 method for the entire period. Needless to mention that CAS-4 method for assessing the value of stock transferred goods have been introduced in the year 2003. Before, the said introduction, there were lot of confusion in the determination of value of stock

transferred goods and goods captively consumed. In these circumstances, we do not find justification to impose penalty on the appellant for not applying CAS-4 method in the determination of assessable value initially. Consequently, we set aside the penalty imposed on the appellant and limit the demand to the normal period of limitation. The assessee's appeals are remanded to the adjudicating authority to re-quantify the demand for the normal period of limitation. The Revenue's appeals consequently being devoid of merit are dismissed.

9. Appeals and Cross-objections stand disposed of accordingly.

(Dictated and pronounced in Court)

(P. Anjani Kumar)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

Sinha