CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 993 of 2012

(Arising out of Order-in-Original No. 19/Commr/M-II/2011 dated 30.03.2012 passed by the Commissioner of Central Excise Mumbai II)

M/s. Larsen & Toubro Ltd. **.....Appellant**
Gate no. 1, Powai Campus,
Saki Vihar Road, Powai (West)
Mumbai

VERSUS

Commissioner of Central Excise, Mumbai II **.....Respondent**
9th Floor, Piramal Chamber,
Lalbaug, Parel, Mumbai

APPEARANCE:

Shri Prasad Paranjape, Advocate & Shri Mohit Raina, Advocate for the appellant
Shri N.N. Prabhudesai, Supdt. (AR) for the respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

FINAL ORDER No: A/86696 / 2019

DATE OF HEARING : 24.09.2019
DATE OF DECISION : 24.09.2019

After hearing both sides, duly represented by Shri Prasad Paranjape, Advocate and Shri N.N. Prabhudesai, Supdt. (AR), I find that the appellants, who are engaged in the manufacture of heavy engineering goods, raised certain supplementary invoice subsequent to the original clearance of the goods and paid the differential duty accordingly. Revenue being, of the opinion that the appellants are required to pay interest also on such delayed payments, issued the demand vide show cause notice dated 06.06.2011 for the period April 2006 to September 2009. Further realising that there was no proposal to impose penalty in the said show cause notice, a fresh show cause notice was issued on 24.02.2012 proposing imposition of penalty upon them. Both the show cause notices were adjudicated by a single common order-in-original confirming the demand of interest of ₹15,04,031/- and imposing penalty of identical amount. During the course of adjudication, the appellants were contesting the interest demand on the ground that the requisite duty was paid at the time of original clearance of the goods as also at the time of raising the supplementary invoices, and inasmuch as the need for additional payment of duty arose on account of hike in final price of the goods, no interest liability should be raised and confirmed against them. The adjudicating authority by not agreeing with the above contention, passed the impugned order.

2. Learned Advocate submits that out of the total interest confirmed of ₹15,04,031/-, they have already deposited an amount of ₹13,88,390/-. He explains that the difference in the deposit amount and the confirmed amount is on account of the fact that the lower authorities have taken into consideration the two invoices as supplementary invoice whereas the same were the original invoices issued at the time of clearance of goods. In any case, Learned Advocate submits that the interest demand

having been raised after the normal period of limitation, without there being any allegation of suppression etc. is barred by limitation as per the settled law on the issue. He draws my attention to the following decisions:-

- Kwality Ice Cream Co. v. Union of India [2012 (281) ELT 507 (Del.)
- Commissioner of Central Excise v. VAE VKN Inds. P. Ltd. [2015 (322) ELT 269 (P&H)]
- Collector of Customs, Madras v. TVS Whirlpool Ltd. [1996 (86) ELT 144 (T)

  Affirmed by Supreme Court in 2000 (119) ELT A177 (SC)
- Emco Ltd. v. Commissioner of Central Excise, Mumbai [2011 (272) ELT 136 (Tri-Mumbai)

  Affirmed by Bombay High Court in 2015 (325) ELT A104 (Bom).

3. However, the Learned Counsel contended that they have already deposited the amount and they are not seeking relief of the interest paid. The only challenge in the appeal is to imposition of penalty upon them.

4. Learned AR for the Revenue submits that demand of interest in terms of Section 11AB of the Central Excise Act, 1944 is appropriate inasmuch as admittedly the differential duty was paid subsequent to the clearance of the goods. He also supports the impugned order imposing penalty upon the appellant.

5. After carefully considering the submissions of both sides, I find that as per the law settled in the above referred decisions, the provisions of limitation are equally applicable to the demand of interest. In the present case, the proceedings stand initiated against the appellant by invoking longer period of limitation. There is neither any allegation nor any evidence of mis-statement or suppression etc. with an intent to evade payment of duty. In fact I find the differential duty was paid by the appellant *suo motu* on raising of supplementary invoice. In such a scenario, no *mala fide* can be attributed to the appellant. In such circumstances, the demand of interest has to be held as barred by limitation but the same is being confirmed to the extent of ₹13,88,390/- as the appellant is not contesting the same on account of having deposited the said amount. Accordingly, I uphold the confirmation of interest amount to the extent of ₹13,88,390/-.

6. As regards penalty, I have already recorded a finding of absence of any *mala fide* on the prat of the assessee, thus not calling for imposition of any penalty upon them. Accordingly, the same is set aside.

7. Appeal is disposed of in above terms.

(Dictated and pronounced in open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

//SR