CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 1540 of 2012

(Arising out of Order-in-Appeal No. P-I/MMD/148/2012 dated 31.07.2012 passed by the Commissioner of Central Excise (Appeals), Pune-I)

M/s. Finolex Cables Ltd. **Appellant**
Mumbai-Pune Road,
Pimpri, Pune 411 018.

Vs.

Commissioner of CGST & CE, Pune-I **Respondent**
ICE House, 41-A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

Appearance:

Shri Rajesh Ostwal with Shri Saurabh Bhise, Advocates, for the Appellant
Shri Deepak Bhilegaonkar, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 23.09.2022
Date of Decision: 23.09.2022

FINAL ORDER NO. A/85967/2022

PER: SANJIV SRIVASTAVA

This appeal is directed against order in appeal No. P-I/MMD/148/2012 dated 31.07.2012 of the Commissioner of Central Excise (Appeals), Pune-I. By the impugned order, the Commissioner (Appeals) upheld the Order-in-Original No. PI/JC/48/CEX/2010 dated 04-11-2010, of the Joint Commissioner of Central Excise, Pune-I as just, fair and legal.

1.2 Joint Commissioner has in his order in original held as follows:

"a) I confirm the total Central Excise duty amounting to Rs. 38,83,087/-, (Rupees Thirty Eight Lakhs Eighty Three Thousand Eighty Seven only) under section 11A(2) of Central Excise Act 1944. I appropriate the amount of Rs. 13,73,007/- already paid by the assessee towards duty and I order for recovery of the

balance amount of duty amounting to Rs.2510080/- from M/s Finolex Cables Limited. 26-27, Mumbai - 3Pune Road, Pimpri, Pune 411 018.,

b) I order recovery of Interest at an appropriate rate on the aforesaid determined duty amount from M/s Finolex Cables Limited. Mumbai Pune Road, Pimpri, Pune 411 018, under section 11AB of Central Excise Act 1944,

c) I impose penalty of Rs. 38,83,087/-, (Rupees Thirty Eight Lakhs Eighty A Three Thousand Eighty Seven only) upon M/s Finolex Cables Limited, Mumbai - Pune Road, Pimpri, Pune 411 018 under section 11AC of the Central Excise Act 1944, provided that where the entire amount of duty and interest is paid within 30 days from the date of receipt of this order, the benefit of reduced penalty of 25% under the proviso to Section 11AC of the Central Excise Act 1944 shall be available to them, provided further that the amount of penalty so determined has also been paid within the stipulated period of thirty days.

21. This order is issued without prejudice to any other action that may be taken under this law or any other law for the time being in force in India."

2.1 The appellants are engaged in the manufacture of excisable goods viz. insulated Wires and Cables falling under Chapter No.85 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants are availing the credit of duty paid on inputs and capital goods and credit of service tax paid on the input services, under the Cenvat Credit Rules, 2004.

2.2 During the course of Audit on appellant's records, it was observed that the appellants were clearing intermediate products to their own units for use in the manufacture of other excisable goods. At the time of such clearances, the appellants paid duty on the basis of CAS 4 value + 10% of cost of production. On perusal of Note(2) of the monthly CAS-4 certificates for the year 2006-07, it was observed that "Other Cost Elements" were worked out on the basis of Audited Cost records for the year 2004-05. The monthly calculation of cost of production for the year 2006-07, therefore, does not reflect the actual cost of production or manufacture. Therefore, the self assessment by the appellants, in respect of goods cleared during 2006-07, is necessarily on provisional basis. On perusal of the Final CAS-4 for the Financial year 2006-07, submitted by the appellants, it was observed that the appellants have undervalued some of the intermediate goods cleared to their own units and the duty short paid due to such undervaluation amounts to Rs.23,31,533/-. On the other hand, there has been excess payment of Rs. 9,63,000/ in respect of some intermediate goods, On pointing out the discrepancy, the appellants, suo moto adjusted the excess payment against the total duty liability and paid Rs. 13,73,007/- vide Cenvat Account Entry. No. 965 dated 14-07-2008. On careful reading of the Section 4 of the Central Excise Act, 1944, it is apparent that assessment is to be done as per transaction basis and such suo moto adjustment is incorrect. Further, such adjustment would lead to unjust enrichment as the credit of excess duty is availed by the appellant's own units. As such, the entire amount short paid by the appellants is required to be recovered under the provisions of proviso to Section 11 A(1) of the Central Excise Act, 1944.

2.2 A Show Cause Notice dated 31-03-2010, was therefore issued to the appellants (310 for demand and recovery of the differential duty amounting to Rs. 23,31,533, in respect of clearance of intermediate goods to their own units under the provisions of proviso to Section 11A(1) of the Central Excise, Act, 1944. Further, the amount of Rs. 13,73,007/- already reversed by them should not be adjusted against the said demand; and for recovery of interest under the provisions of Section 11AB of the Central Excise Act, 1933; and for imposition of penalty under the provisions of Section 11AC of the Central Excise Act, 1944.

2.3 A corrigendum dated 05-05-2010 to the Show Cause Notice dated 31-03-2010, was issued to incorporate the demand for the period 2005-06 also, as the appellants had not submitted the CAS-4 certificate for the financial year 2005-06 and hence the short payment for the Year 2005-06, was worked out and the demand under the provisions of proviso to Section 11A(1) of the Central Excise Act, 1944 for the years, 2005-06 and 2006-07 was revised to Rs. 38,83,087/-.

2.4 The adjudicating authority vide order-in-original referred in para 1.2 above adjudicated the show cause notice.

2.5 The Commissioner (Appeals) vide Order-In-Appeal No PI/RKS/68/2011 dated 11-04-2011 dismissed the appeal without going into the merits of the appeal, holding therein that debit in Cenvat account cannot be termed as pre-deposit.

2.6 CESTAT vide Order No A/193/12/EB/C-II dated 30.01.12 set aside the order of Commissioner (Appeals) and remanded the appeal back to Commissioner (Appeals) inter alia directing to decide the appeal on merits without insisting on any further deposit

2.7 In remand proceedings Commissioner (Appeals) has decided the matter by the impugned order. Aggrieved the appellants have filed this appeal.

3.1 We have heard Shri Rajesh Ostwal with Shri Saurabh Bhise, Advocates for the appellants and Shri Deepak Bhilegaonkar, Additional Commissioner, Authorized Representative for the revenue

3.2 Arguing for the appellants learned counsel submits:

- Case of the department is that the valuation of goods was done on the basis of monthly CAS-4 which is prepared on the basis of previous year's / previous month's figures. As per the Show Cause Notice, assessment done by the Appellants on the basis of monthly CAS-4 was provisional.
- Monthly CAS-4 is correct and gives more accurate cost of the production. The cost of production was arrived based on previous year's cost of production. There is no provision in law which states that cost of production has to be calculated for the financial year as a block of period and only such cost of production must be applied for that financial year. In the present case, the only cause for difference in the value is the extreme fluctuation of raw material prices (copper). Therefore, longer the range of period under consideration, greater the fluctuation. Hence, the concept of cost of production for a yearly block is not a correct representative of the cost of production on a given day or month.

- Provisions of Rule 7 of the Central Excise Rules are optional and can be resorted to only at the option of assessee by passing a specific order.
    - Metal Forgings [2002 (146) ELT 241 (S.C.)]
    - Hindustan National Glass & Indus. Ltd. [2005 (182) ELT 12 (S.C.)]
    - Maharashtra Cylinders Pvt. Ltd. [2010 (259) ELT 369 (Bom.)]
    - Presvels Pvt. Ltd. [2015 (329) ELT 347 (T.)]
- In the present case, duty paid by the Appellants on the semi-finished goods cleared to the sister units of the Appellants is available and taken as credit by them. Therefore, if the differential duty is paid, it would be available as credit. Thus, entire exercise is revenue neutral. Hence, the impugned order is liable to set aside.
    - Special Steel Ltd. 2015 (329) ELT 449 (T.) Affirmed by Supreme Court in 2016 (334) ELT A123 (S.C.)
    - Anglo French Textiles [2018 (360) ELT 1016 (T.)] Affirmed by Supreme Court in 2018 (360) ELT A301 (S.C.)
    - Indeos ABS Ltd. 2010 (254) ELT 628 (Guj.)
    - SRF Ltd.[2007 (220) ELT 201 (T.)]Affirmed by Supreme Court in 2016 (331) ELT A138 (S.C.)
    - Sanvijay Rolling & Engineering Ltd. [2018 (11) GSTL 344 (Bom.)]
- CESTAT Final Order No. A/85373-85374/17/EB dated 20.9.2016 in the matter of Mahindra & Mahindra Ltd. (Page 48 - 58 of case law compilation) Affirmed by Supreme Court vide order dated 25.2.2019 passed in the matter of Commissioner of CGST & CX. Vs. Mahindra & Mahindra in Civil Appeal No.2409-2410 of 2019
- Without prejudice, even if annual CAS-4 is applied, excess duty paid within the year should be adjusted with the short payment of duty.
    - TAL Manufacturing Solutions Ltd. [2005 (188) ELT 342 (T.)]
    - TAL Manufacturing Solutions Ltd. [2007-TIOL-1787-CESTAT-MUM]

    - Essar Steel India Limited [2016 (9) TMI 1175-CESTAT-NEW DELHI]
    - Jindal Steel & Power Ltd. [2016 (342) ELT 253 (T.)]
    - Godrej Consumer Products Limited [2017 (12) TMI 1091-CESTAT-NEW DELHI]Affirmed by Madhya Pradesh High Court at 2019 (5) TMI 222 - MADHYA PRADESH HIGH COURT

- Without prejudice to above, it is submitted that assessment cannot be provisional only in cases where cost of production was more than original value. For parity's sake, the assessment of goods involving excess payment of duty where cost of production was less than original value must also be considered as provisional. While finalizing provisional assessment, adjustment of excess duty towards short payment on clearances is permissible and must be allowed.
    - Toyota Kirloskar Auto Parts Pvt. Ltd. [2012 (276) ELT 332 (Kar.)]
    - Jonas Woodhead & Sons (I) Ltd. [2015 (329) ELT 577 (T.)]
    - Mercedes-Benz (I) Pvt. Ltd. [2017 (347) ELT 646 (T.)]
- Invocation of extended period of limitation is incorrect.

15.1 The Appellants have provided all necessary details to the department and they have not suppressed any facts especially with intent to evade payment of duty. Entire demand for the period April 2005 to March 2007 is beyond the period of limitation.

15.2 Entire exercise is revenue neutral inasmuch as the sister units of the Appellants are eligible to take credit of differential duty, if any, payable by the Appellants. Hon'ble Supreme Court in the case of CCE Vs. Nirlon Limited – 2015 (320) ELT 22 (S.C.) has held that the extended period cannot be invoked in case where demand is revenue neutral. The finding of suppression with intent to evade payment of duty cannot stand against the Appellants as the demand in the present case is revenue neutral.

15.3 This Hon'ble CESTAT in case of Sanvijay Rolling & Engineering Ltd. Vs. CCE – 2022 (2) TMI 893 - CESTAT MUMBAI held that when entire exercise was revenue neutral, extended period of limitation was not invokable as the assessee could not have achieved any purpose to evade duty.

15.4 Identical view was taken by Hon'ble Madras High Court in case of CCE Vs. Tenneco RC India Pvt. Ltd. – 2015 (323) ELT 299 (Mad.) and by this Hon'ble CESTAT in case of Rallis (India) Ltd. Vs. CCE – 2016 (12) TMI 1453 - CESTAT MUMBAI

Imposition of penalty on the Appellants is incorrect.

17. The Appellants have not contravened the provisions of the Act/Rules. The Appellants have correctly paid duty on the value of goods determined on the basis of monthly CAS-4 certificates. Accordingly, the Appellants had not acted in contravention of the provisions. Hence, penalty is not imposable on the Appellants under Section 11AC of the Central Excise Act, 1944. Further, the issue in dispute involves interpretation of legal provisions as valuation of goods is a pure question of law. Penalty is not imposable for this reason as well.

Interest is not recoverable from the Appellants.

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18. The demand for differential duty confirmed by the impugned Order-in-Appeal is not sustainable in law. It is settled law that when the original demand is not maintainable, interest cannot be recovered. Therefore, since the demand is not sustainable, question of recovering interest does not arise.

3.3 Arguing for the revenue learned authorized representative while reiterating the findings recorded in the impugned order submits

- The invoices annexed by the Appellants at page nos.37 to 44 clearly show that the assessee only mentioned that the goods were cleared under Rule 8 of Valuation Rules, 2000 and duty payable on ass. value computed on the basis of 110% of cost of production. However, they suppressed that the cost was not arrived at based on the relevant and proper CAS-4 certificate.
- The ratio of the following case laws support the Revenue case on limitation

- Hindustan Copper Ltd. [2005 (191) E.L.T. 665 (Tri. - Del.)]
- Hindustan Zinc Ltd. [2012 (276) E.L.T. 393 (Tri. - Del.)]
- Hero Honda Motors Limited [2011 (273) E.L.T. 89 (Tri. - Del.)]
- Versus Baba Asia Ltd. [2011 (267) E.L.T. 115 (Tri. - Del.)]
- Star Industries [2015 (324) E.L.T. 656 (S.C.)]
- Maharshi Alloys Pvt ltd [2020-TIOL-494-CESTAT-HYD]
- Dilip Kumar & Co.
- Mahindra and Mahindra Ltd [2018-TIOL-2061 -CESTAT-MUM]
- Gestamp Automotive India Pvt Ltd [2017 (7) G.S.T.L. 337 (Tri. - Mumbai)]

➢ In Vidyut Metallics Ltd. [2015 (11) TMI 91 -CESTAT MUMBAI] and in the case of Dhariwal Industries Ltd. [2019 (21) G.S.T.L. 461 (Tri. - Mumbai)] held that under Rule 8 cost of production can be ascertained only on the basis of CAS-4 certificate. In the instant case no CAS-4 certificate is furnished till date as held in OIO.

➢ In the case of Gujarat State Fertilizers & Chemicals Ltd. [2007 (218) E.L.T. 238 (Tri. - Ahmd.)] held that in case of clearance of goods on inter-unit transfer basis on payment of duty after adopting value based on previous year data, and when differential duty was paid based on CAS-4 after being pointed out by Audit, the condition that correct assessable value could not be ascertained at the time of clearance cannot be accepted. Assessee could have sought for provisional assessment and there is no time limit prescribed for demand of interest due. The demand of interest was upheld.

➢ In the instant case, the assessee Appellants have paid Rs. 13,73,0077- but did not pay interest thereon. For demand of interest following case laws are relied upon

- Tata Iron & Steel Co. Ltd. [2014 (300) E.L.T. 571 (Tri. - Mumbai)]

- Reliance Industries Ltd. [2018 (6) TMI 323 - CESTAT MUMBAI]
- Alstom T&D India Ltd. [2015 (316) E.L.T. 362 (Mad.)]

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Commissioner (Appeals) has recorded following findings in the impugned order to uphold the order of Joint Commissioner.

"10.1. I find that while supporting their contention that monthly CAS-4 Certificates are correct, the appellants interalia have advanced an argument that they are enhancing the cost of production by 10 to 15% towards inflation. I find that CAS-4 standards nowhere provide for increasing the cost elements by 10 to 15% to take care of 'inflation and other factors'. CAS-4 standard require material receipts to be valued at purchase price at the time of acquisition. Thus, the appellants have deviated from the standards set out by the ICWAI while arriving at the cost of production. By adding 10 15% to take care of inflation, the appellants have tried to bypass the requirement of working of cost of production after audit of financial accounts at the close of the year. As such, the learned adjudicating authority interalia has rightly held that the method of costing adopted by the appellants is incorrect and final cost can be exactly ascertained only after finalization of the accounts. This view is supported by Hon'ble CESTAT's decision in case of Hindustan Copper Ltd. V/s Commissioner of Central Excise, Bhopal (2005 (191) E.L.T. 665 (Tri.Del.)] wherein while remanding the matter back for re-adjudication, CESTAT has held as under :

'Valuation (Central Excise) - Copper concentrate produced and captively consumed C.B.E. & C. circular dated 13-2-2003 clarifying that cost of production of captively consumed goods should be determined in terms of CAS-4, a standard of valuation worked out in consultation with Institute of Cost and Works Accountants in India - In instant case, valuation not done in terms of CAS-4 standard but on monthly basis, matter remanded to original authority to decide assessable value in terms of CAS 4 - Section 4 of Central Excise Act, 1944'

10.2. I find that appellants have erred in assessment of the goods cleared for captive consumption during the F.Y.2005-06 and 2006-07. The learned adjudicating interalia has rightly held that appellants should have assessed these goods in accordance with the provisions of Sec.4(1)(b) of the Central Excise Act, 1944 read with Rule 8 of the Valuation Rules, 2000, since the correct cost of production was not available. In spite of being aware of the fact that it was not possible to arrive at the correct assessable value of the goods cleared for captive consumption during the period 2005-06 & 2006-07, appellants, instead of resorting to provisional assessment, they have for some reasons, adopted their own method of assessment based on monthly CAS-4, which is incorrect under the law. In my view these acts of omission and commission of appellants is enough to establish the intent and ground enough to demand the differential duty for the period 2005-06 & 2006-07.

10.3. I further find that the appellants have taken it as an option on their part, whether or not to opt for the provisional assessment under Rule 7 of the Central Excise Rules 2002 and contend that adverse inference should not to be drawn for failure of not opting for the same. The said contention would have been legal and valid, had the appellants arrived at the correct/final assessable value of the goods under consideration at the time of clearance. Appellants have not disputed that there was fluctuation in the value of the goods under dispute. However, they have refrained from resorting to provisional assessment.

10.3.1 I find that the entire defence of the appellant thus rests on the ground that since they did not request for provisional assessment, the assessment was final, hence, recovery cannot be demanded. In this regard, I find that provisions of Sec.4(1) of the Central Excise Act, 1944 mandate that the correct value of the goods cleared has to be arrived at the time of clearance or goods. Rule 8 of the Valuation Rules read with Sec.4(1) ibid very clearly provides manner of arriving at the correct assessable value of the goods cleared for captive consumption which has not been followed or complied with by the appellants. Under the circumstances, the adjudicating authority interalia has correctly and legally demanded and confirmed the differential duty.

10.4. I find that the argument on the grounds of revenue neutrality is also not of great help to the appellants. The appellants have relied on the following case laws to support their contention of revenue neutrality, as the duty paid by the appellants would be available to their other unit as CENVAT credit:

i. *CCE & C (Appeals) V/s Narayan Polyplast (2005(179)ELT(20(SC)*
ii. *CCE & C V/s Narmada Chemature Pharmaceuticals 2005 (179) ELT 276 (SC)]*
iii. *CCE V/s Textile Corporation (2008(231)ELT 195(SC)]*
iv. *CCE V/s Jamshedpur Beverages (2007(214 ELT321(SC)*
v. *CCE V/s Coca Cola India(P) Ltd. [2007(213)ELT 490(SC)).*

10.4.1 I however find that the aforesaid case laws deal with situations involving availing of exemption notification or undervaluation of goods, the credit of which was available to other unit. In none of these cases, the undervaluation was on account of mis-declaration or provisional declaration. As such these citations are not relevant to the current appeal. On the contrary, there is a catena of judgments wherein higher appellate forums have interpreted the law and have held that the question of revenue neutrality does not arise in such situations. Some such judgments are enlisted here under:

Hindustan Zinc Ltd. V/S Commissioner of Central Excise, Jaipur 1 [2012(276)E.L.T.393 (Tri.Del.)]

Hon'ble tribunal in this case as held that subsequent payment of amount short paid cannot ipso facto result in revenue neutrality, merely because the appellants are entitled to avail credit in respect of duty paid - Right to claim arises only after payment of duty and not prior thereto - Merely because assessee paid duty subsequent to the date even though the appellants are entitled for credit for such payment of duty that does not result in revenue neutrality

Hero Honda Motors Ltd. V/s Commissioner of C. Excise, Meerut-I [2011(273) E. L.T. Del. Tri.)].

Tribunal in this case has held that Revenue neutrality can arise only in case of discharge of liability in one manner or other within the prescribed period within which the duty was payable. In case of delay in payment of duty, obviously, there is interest liability and, therefore, question of revenue neutrality cannot arise without ascertaining the exact amount of duty liability with reference to the time factor and also taking into consideration the interest liability thereon, on account of delay in payment.

Commissioner of C. Excise, Chandigarh V/s Baba Asia Ltd. [2011 (267) E.L.T. 115 (Tri. - Del.)]. In this case, Hon'ble Tribunal has held that revenue neutrality as Cenvat credit available - Captive consumption exemption for NCCD denied on additive mixture used in manufacture of chewing tobacco - Submission that case of revenue neutrality as credit available - Revenue justified in holding that each and every situation cannot be termed as revenue neutral situation - Failure to pay duty results in loss relating to principal amount and also of interest."

4.3 Undisputedly Appellants submitted the CAS-4 certificates along with their ER-1 returns. The CAS-4 certificate mentions that valuation was done on the basis of previous year's figures and adjustment on account of inflation was done. They had adopted the above method of valuation since July 2000 when Valuation Rules, 2000 were introduced. As per chapter 6.8 of ICWAI guidelines, the cost of production can be determined on the basis of previous quarterly result also. The Appellants have appropriately taken cost figures of the previous month's CAS-4 certificates as a basis to arrive at the cost of production of each month. There was no objection whatsoever by the department at any point of time. For the first time in February 2008, during the course of audit for the period April 2006 to March 2007, this practice was objected and the Appellants were asked to re-determine cost of production on the basis of final annual CAS-4 of April 2006 to March 2007.

4.4 If the Appellants are to value their clearance on the basis of annual CAS-4 figures, they have paid excess duty in some instances as is admitted in the show cause notice, order in original and the impugned order. Further the both the authorities have concluded in the order against adjustment of the excess payment of duty against short payment on the ground of unjust enrichment. Both authorities also hold that the assessments were provisional. The stand of the lower authorities is self contradictory and contrary to the observations made by the Hon'ble Apex Court in case of Mafatlal Industries [1997 (89) ELT 247 (SC)] para 95, reproduced below:

"95.*Rule 9B provides for provisional assessment in situations specified in Clauses (a), (b) and (c) of sub-rule (1). The goods provisionally assessed under sub-rule (1) may be cleared for home consumption or export in the same manner as the goods which are finally assessed. Sub-rule (5) provides that "when the duty leviable on the goods is asssessed finally in accordance with the provisions of these Rules, the duty provisionally assessed shall be adjusted against the duty finally assessed, and if the duty provisionally assessed falls short of or is in excess of the duty finally assessed, the assessee shall pay the deficiency or be entitled to a refund, as the case may be". Any recoveries or refunds consequent upon the adjustment under sub-rule (5) of Rule 9B will not be governed by Section 11A or Section 11B, as the case may be. However, if the final orders passed under sub-rule (5) are appealed against - or questioned in a writ petition or suit, as the case may be, assuming that such a writ or suit is entertained and is allowed/decreed - then any refund claim arising as a consequence of the decision in such appeal or such other proceedings, as the case may be, would be governed by Section 11B. It is also made clear that if an independent refund claim is filed after the final decision under Rule 9B(5) re-agitating the issues already decided under Rule 9B - assuming that such a refund claim lies - and is allowed, it would obviously be governed by Section 11B. It follows logically that position would be the same in the converse situation."*

4.5 W have no quarrel with case laws relied upon by the revenue to the effect that assessment of the captively consumed goods needs to be done on the basis of CAS-4 certificate. It is also the case of the appellant that they made the assessment of the goods captively consumed in their sister concern on the basis of CAS-4 certificate, duly issued by the Cost Accountant. That being so the assessments made on the basis of the CAS-4 certificates as per these decision has to be treated as final.

4.6 Appellants have while filing the ER-1 return disclosed all the facts and have also submitted the CAS-4 certificate also. The department was aware of the valuation practices adopted by the Appellants. All the material facts relating to the manufacture, clearance and valuation of the cables used in the captive consumption were always within the knowledge of the department. The ER-1 returns also show that there was inter-plant transfer. Undisputedly appellant had during few months excess paid the duty. This clearly shows that the alleged short payment of duty was not accompanied with intention to evade payment of duty. Therefore, when the Appellants have paid duty in excess of what was payable as per the department, the finding of suppression cannot survive against the Appellants. In our view appellants have not violated any provisions of the Central Excise Act or the rules made thereunder. Thus even if there was any short payment of duty the same was on the basis of the CAS-4 certificate issue by the independent Cost Accountant, was due to bonafide belief of the Appellants regarding determination of assessable value, cannot be on account of suppression, fraud misstatement or contravention of the rule with the intention to evade payment of duty leading to invocation of extended period of limitation as per the proviso to Section 11A (1) of the Central Excise Act,1944.

4.7 As we are not in position to sustain the demand made, demand for interest and penalties imposed cannot be upheld.

5.1 The appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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