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

Excise Appeal No. 85894 of 2013

(Arising out of Order-in-Appeal No. BR(10)Thl/2013 dated 31.12.2012 passed by Commissioner of Central Excise (Appeals), Mumbai)

M/s. Nitin Castings Ltd. **Appellant**
Eastern Express Highway, Thane-400 601.

Vs.

Commissioner of Central Excise-Thane-I **Respondent**
IVth Floor, Navprabhat Chambers, Mumbai-400 028.

Appearance:
Shri A. M. Chitnis, Consultant, for the Appellant
Shri P. K. Acharya, Superintendent, Authorised Representative, for the Respondent

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

Date of Hearing: 14.03.2023
Date of Decision: 14.03.2023

FINAL ORDER NO. A/85560/2023

PER: SANJIV SRIVASTAVA

This appeal is directed against order-in-appeal no. BR(10)Thl/2013 dated 31/12/2012 passed by Commissioner of Central Excise (Appeals), Mumbai by the Impugned order Commissioner appeal has upheld the order of the original authority holding as follows:

' i) *I confirm the following show cause cum demand notices*

a) *V/Adj(SCN)15-317/DC-2001/M-VI/93Dt.28-6-200 demanding Rs. 10,856/- (Rs. Ten Thousand Eight Hundred and Fifty Six Only) and*

b) *V/Adj(SCN)15-317/DC-2001/M-VI/169Dt.27-9-20001 demanding Rs. 54,676/- (Rs. Fifty Four Thousand Six Hundred and Seventy Six only) Being Central Excise duty on interest accrued on* *advances received against clearances made on or after 01-7-2000 and order under provision to Section 11A of the Central Excise Act, 1944.*

ii) I impose a penalty of Rs. 65,532/- (Rs. Sixty five Thousand Five Hundred and Thirty Two only) on M/s. Nitin Castings Ltd under Rule 173Q of the Central Excise Act, 1944.

iii) I also order recovery of interest at appropriate rate from M/s. Nitin Castings Ltd.'

1.2 Commissioner appeal for upholding the following original has given following findings.

'*It is not under dispute that the appellant had manufactured and supplied tailor made item to their customers. It is also not under dispute that they had received advance amount from their customers. Appellant has claimed that they had deposited the amount in their current account and did not earn any interest thereon. The C.A. Certificate dated 23.11.2012 issued by M/s P.G. Gupta & Co, provided by the appellant does not help them in any manner. It only states that the amount of advances received from the customers during the period 07.12.1999 to 21.09.2001 were deposited in Cash Credit account and have not earned interest on such deposited amount. It is not under dispute that interest is not paid by the Bank on amount lying in Cash Credit account or Current Account Merely stating that the current assets were much more than the net current liabilities and therefore, the amount received as deposits were not necessarily been accepted as working capital does not help them in any manner again. The appellant in appeal has nowhere stated that and no evidences have been provided that these amount though deposited in the Cash*

Credit account or Current Account were not utilized by them or that in the absence of said amount they would have still manufactured and supplied the goods in question without borrowing the money from any other source at the same price Definitely the notional interest on the advance deposit is an opportunity cost, recognized even in the costing principles. The same therefore, cannot be ignored. In the present case it is not the case that a particular product is sold to different persons at the same price irrespective of whether the buyer has paid the deposit or not or irrespective of the amount of deposit by different customers. These are tailor made items, made and supplied to different customers at different prices depending upon the goods that are supplied In the present case, it is not that the appellant had paid any interest to the customers for the advance amount received by them. It is not the case further that the cost of production of the goods was not at all taken into consideration while arriving and determining the price of the goods in question. Had they not received the advance amount the appellant would have required to utilize their own resources or would have required to borrow the amount at market rate or even influenced rate. In both such cases the cost of production would have gone up and would have also influenced the prices. In the absence of any evidence to show contrary to the above findings. I am of the view that the respondent had correctly added the notional interest to arrive at the assessable value for payment of Central Excise duty.'

2. Issue involved rules of impugned duty of notion interest on the advances taken from the customer in the assessable value of the goods. This matter earlier came before

the Tribunal and the tribunal order dated 05/04/2006 has remanded the case back to original authority to consider the matter for fresh decision taking into account the ratio of Hon'ble Apex Court decision in the case of **CCE Vs Hero Honda Motors Ltd. [2004(183) ELT120(SC)].**

3.1 We have heard Shri A. M. Chitnis, Consultant for the appellant and Shri P. K. Acharya, Superintendent for the respondent.

3.2 Arguing for the appellant Learned Counsel submits:

- No interest earned on such advances and as such it is no question of returning to the customers. So the judgement of Hon'ble Supreme Court in case of Hero Honda is not applicable in this case SDR accepted this.
- Read out the provisions of Explaination-2 of Rule 6 of Central Excise Valuation Rules 2000. In this connection it is mentioned that revenue has not adduced any evidence to prove that by accepting the advances do not influenced the assessable value.
- Submitted copy of citation reported at 2000 (119) E.L.T. 582 (TRB) in support of the appeal to be allowed.

3.3 Learned AR reiterates the finding recorded in the impugned order.

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

4.2 Before the original authority appellant has produced the Chartered Accountant certificate dated 23.11.2012 where it has been clarified that as per the book of accounts appellant had not received any interest on the advances received by them.

4.3 Further we also note the copy of the certificate.

CA Prakashchand G. Gupta
B.Com ., F.C.A.

P.G. Gupta & Co.
Chartered Accountants

Off: S-12 , Gautam Centre , Tilak Path, Thane (E) -400603 . Tel-25325496

CERTIFICATE

This is to certify that we have gone through the accounts maintained by M/s. Nitin Castings Limited having their manufacturing unit at 74, Eastern Express Highway, Thane (West) – 400 601 and confirmed that the advances received from their customers during the period from 7th December, 1999 to 21st September, 2001 as per list A & B both enclosed have been deposited in Cash Credit Account of Indian Overseas Bank, Naupada Branch, Thane in A/c No. 705 and Union Bank of India, Nariman Point Branch, Mumbai A/c No. 2140672 and have not earned the interest on such deposited amounts.

The above certificate is issued on the basis of books of accounts produced before us for verification and the request of the management of the Company.

Thanking you,

For **P.G. Gupta & Co.**
Chartered Accountants

P.G. GUPTA & CO. Thane M.No.38235 Chartered Accountants

CA Prakash G. Gupta
Proprietor
Membership No. 38235
Thane, the 23rd day of November, 2012

4.4 Issue has been considered by the tribunal and various courts time and again. It is settled principle that unless and until the revenue shows that advances have earned interest on such advances and the prices to final buyer has been depressed they could not have been added this notional interest to the assessable value. Reliance is placed on following decisions:

- Paper Products Ltd. [2009(242) E.L.T. 98 (Tri. - Mumbai)
- Kalpataru Power Transmission Ltd. [2003(151) E.L.T. 363 (Tri.- Del.)]
- I.S.P.L. Industries Ltd. [2003(154) E.L.T. 3 (S.C.)

4.5 Valuation rule also provide that notional interest on advances could have been added to the assessable value only if the same depresses the value of the goods. By order-in-appeal no. KKS(174) 174/M-VI/2002, KKS(203) 203/M-VI/2002 & KKS(213) 213/M-VI/2002 filed by M/s. Nitin Castings Ltd., M/s. J.K. Engg. Works & M/s. Ascent Plant and Machinery Pvt. Ltd. the Commissioner (Appeal) has in case of the appellant itself is held as follows:

> *'Thus, the onus lies on the department to prove that there is a nexus between the acceptance of advances and sale price charged to the customers and that the prices charged to the customers are depressed on account of the advances given by the customers. I find that the lower adjudicating authorities could not prove the nexus between the advances obtained and sale price of the goods. They have failed to establish the nexus with supporting evidence and to quantify the additional considerations in the instant case. On the contrary, the appellants have forcefully argued that the advances taken by them do not depress the value of the goods. They submit that in some cases, they have not taken advance, in some cases the advances taken vary, but in such cases, the same prices have been charged from customers for identical goods, irrespective whether any advances were taken or not taken or advances taken were less or more. Hence, I hold that the appellants are not liable for duty on interest accrued on advances.'*

4.3 In view of the above findings we do not find any merits in the impugned order same is set aside.

5.1 Appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)

Member (Judicial)

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