CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 5

Excise Appeal No. 89403 of 2014

(Arising out of Order-in-Original No. 38-39/CEX/COMMR/2014 dated 30.06.2014 passed by Commissioner of Central Excise & Customs, Aurangabad)

M/s. Garware Polyester Ltd. **Appellant**
Aurangabad Pune Road, Waluj,
Aurangabad 431 133, Maharashtra.

Vs.

Commissioner of CE & ST, Aurangabad **Respondent**
Town Centre, N-5, CIDCO,
Aurangabad 431 003.

AND

Excise Appeal No. 89409 of 2014

(Arising out of Order-in-Original No. 38-39/CEX/COMMR/2014 dated 30.06.2014 passed by Commissioner of Central Excise & Customs, Aurangabad)

M/s. Garware Polyester Ltd. **Appellant**
L-6, MIDC, Chikalthana
Aurangabad 431 210, Maharashtra.

Vs.

Commissioner of CE & ST, Aurangabad **Respondent**
Town Centre, N-5, CIDCO,
Aurangabad 431 003.

Appearance:

Shri Rajesh Ostwal, Advocate, for the Appellant
Shri Vinod S. Chettiparambil, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 10.01.2024
Date of Decision: 02.02.2024

FINAL ORDER NO. 85056-85057/2024

PER: ANIL G. SHAKKARWAR

Above stated two appeals are taken together for disposal since they are arising out of common impugned order-in-original dated 30.06.2014. Appellant has two manufacturing units, one at Chikalthana, Aurangabad and the other at Waluj, Aurangabad. The above stated two appeals are respectively filed by the said two units of the appellant.

2. Brief facts of the case are that the appellant was manufacturing various products and clearing the same to their own manufacturing units. As a result, they were required to pay central excise duty by determining value of the goods as provided under Rule 8 of Central Excise Valuation Rules, 2000. The said rule required submission of cost of manufacture under a proforma called CAS-4 certificate. Since the said certificate was not readily available for the reason that for issue of such a certificate, cost data is required. Therefore, Revenue allowed the appellant for provisional assessment of the goods manufactured and cleared by them under Rule 7 of Central Excise Rules. Every quarter the appellant produced cost data in the said proforma and on the basis of which assessments were finalized by the competent authority of Revenue. Revenue conducted special audit of both the units of the appellant and on the basis of cost date obtained during the special audit, Revenue issued two show cause notices – one to Waluj unit and another to the appellant's Chikalthana unit. The show cause notice issued to Waluj unit was dated 25.09.2013 wherein it was stated that some of the factors required for arriving at cost of manufacture were not considered by the appellant and, therefore, the goods cleared by Chikalthana unit of the appellant during the period from July 2007 to December 2011 got undervalued and as a result, the appellant was required to pay differential central excise duty of around Rs.2.62 crores. Through another show cause notice dated 19.03.2013 issued to Chikalthana unit on similar lines, differential central excise duty of around Rs.1.46 was demanded for the period from October 2007 to December 2011. In both the show cause notices, there were proposals for imposition of penalties. Appellant contested both the show cause notices through common reply dated 23.04.2014 wherein, in addition to the other grounds, at para 5.4 the appellant stated that the Assistant/Deputy Commissioner finalized provisional assessment for every quarter and passed orders finalizing provisional assessment and that the said orders

were never reviewed by the department on the ground that the quarterly CAS-4 certificates submitted by the appellant were not correct. Appellant also enclosed one copy of such order passed on 11.11.2010 by Deputy Commissioner finalizing assessment for the quarter for the period from 01.07.2009 to 30.09.2009. In addition, appellant raised various grounds. Learned original authority passed the impugned order. Learned original authority, at para 18.3.1 of his impugned order, has held that the demands on the basis of costing of CAS-4 on annual basis by DD (Cost) appears without authority and not valid at all. However, he has stated that some arithmetical mistakes have occurred in the cost certificates submitted by the appellant and, therefore, he confirmed a demand of Rs.90,420/- against Chikalthana unit of the appellant and a demand of Rs.1,88,317/- against the Waluj plant of the appellant. He also imposed equal penalty on them. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that when reworking of the cost data was done for various quarters, appellant was found to have paid excess duty for a few quarters and the appellant was found to have paid less amounts for a few quarters and the original authority has only taken into consideration those quarters when less amounts were paid and he confirmed the demand. Learned counsel has submitted that had the original authority also taken into consideration those quarters for which excess amount was paid, then the resultant finding would have been that Revenue would have refunded to the appellant the excess duty paid by the appellant. He has further submitted that there were no proposals in the show cause notice for such recalculation and, therefore, the demands confirmed by the original authority are traveling beyond the show cause notices.

4. Heard the learned AR who has submitted that the confirmed demands are part of the demand raised and, therefore, the original authority has not travelled beyond the show cause notices.

5. We have carefully gone through the records of the cases and submissions made. We find that during the period of dispute, the appellant was regularly submitting cost data for finalization of provisional assessment and provisional assessments were regularly being finalized. In reply to the show cause notices, appellant has raised the issue that the orders finalizing the provisional assessments passed by the Assistant/Deputy Commissioners were never reviewed by the department. We note that on regular basis the provisional assessments were finalized and the finalization of provisional assessments were adjudication orders passed by Assistant or Deputy Commissioner. If Revenue was aggrieved by the said orders, the course of action provided by law for Revenue was to prefer appeal against such finalization orders before learned Commissioner (Appeals). After the limitation period for filing of appeal before Commissioner (Appeals) is over, then such assessments orders become final in law and cannot be reopened. In the present case, learned original authority has reopened such assessment beyond the period of limitation and, therefore, the impugned order is not sustainable. Further, learned original authority in this case also did not have jurisdiction to reopen such assessments for the reasons that the proper authority to reopen assessment made by Assistant or Deputy Commissioner under Central Excise law is Commissioner (Appeals). Therefore, the impugned orders are not sustainable. In fact, both the show cause notices are also not sustainable for the same reason.

6. In view of our finding, we set aside the impugned orders and allow both the appeals.

(Order pronounced in the open court on 02.02.2024)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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