CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH, COURT NO. 3

EXCISE APPEAL NO. 86706 OF 2021

(Arising out of Order-in-Appeal No.NA/GST/A-III/MUM/7/1/2021-22 dated 30.07.2021passed by the Commissioner of GST& Central Excise(Appeals-III), CGST & CentralExcise, Mumbai, 9th Floor, PiramalJijibhoy Lane, Lalbaug, Parel, Mumbai-400012)

UPL LTD.
UPL House, 610 B/2, Bandra Village Off
Western Express Highway Bandra East, **Appellant**
Mumbai-400031

Vs.

THE COMMISSIONER OF CGST & CENTRAL EXCISE-PALGHAR **Respondent**

Appearance:
Present for the Appellant:Shri Prakash Shah, Advocate
Present for the Respondent: Shri Rajeev Ranjan (AR)

CORAM:HON'BLE MR.ASHOK JINDAL, MEMBER (JUDCIAL)

FINAL ORDER NO.86213/2024

Date of Hearing/Decision: **11.09.2024**

PER: ASHOK JINDAL

The appellant is in appeal against the impugned order wherein the demand of interest has been confirmed for intervening period for the purpose of supplementary invoices and penalty has also been imposed on them.

2. The facts of the facts care that the appellant is engaged in the manufacture of products, namely, Triazinone, an excisable product attracting duty @ 12.36% during the period 2014-15. An audit was conducted which revealed that noticee have cleared their semi-finished goods, namely, Triazinne to another manufacturing plant of their group company during the period

2014-15 on payment of duty at a value of Rs.695 per kg whereas CAS-4 for Triazinone submitted by the appellant indicated that the value for the said product was determined as Rs.812/-. Thus, there was difference of Rs.117/- per Kg in the valueof Triazinone so cleared and differential duty on the said differential amount alongwith interest was required to be paid by the appellant. It was also found that by CERA vide invoice dated 23.03.2015, the assessee had paid differential duty of Rs.49,29,823/- on differential value of Rs.3,98,300/- on account of3,40,900 Kgs. of Triazinone cleared. However, on verification of sale register of the appellant for the year 2014-15, it was revealed that the assessee had cleared 4,28,680 Kgs. of Triazinone to other UPL units, as against 3,40,900/- Kgs. of Triazinone declared by the appellant in their monthly ER-1 returns filed for the same period. Thus, when compared to their sales register figures for the financial year 2014-15 with the corresponding ER-1 returns filed, there is short declaration in the quantity of clearances of Triazinone affected to the extent of 87,770 kgs. Therefore, a show cause was issued to demand duty on short clearance shown in the ER-1 returns. Consequently, the same is to be paid alongwith interest. A penalty was also proposed to be imposed on the appellant. By way of impugned order, the duty was demanded. The appellant had already paid duty on the supplementary invoices and the same was appropriated. In spite of that, the demand was confirmed and the penalty equal to duty was also confirmed. The ld.Commissioner (Appeals) has affirmed the order of the adjudicating authority. Against this order, the appellant is before me.

3. Ld.Counsel appearing for the appellant submits that at the time of clearance of the goods, they were not indicating the value as per CAS-4 certificate and it was later on revealed and the appellant paid duty on the supplementary invoices, which was already appropriated in the adjudication order itself. Therefore, he prayed that in the facts and circumstances of the case, no penalty is imposable on the appellant.

4. On the other hand, ld.A.R. for the Revenue appearing on behalf of the Revenue, reiterated the finding of the impugned order.

5. Heard the parties and considered the submissions.

6. Considering the fact that the show cause notice was issued to demand on short clearance shown in the ER-1 returns and later on the appellant paid duty on the strength of supplementary invoices. In that circumstances,as the duty already paid and appropriated, no demand is sustainable against the appellant. Further, I find that at the time of clearance of goods, the appellant has not paid appropriate duty payable on the goods. In that circumstances, as the duty paid on the strength of supplementary invoices, the appellant is required to pay interest for the intervening period, invoice-wise at the applicable rate. Therefore, the demand of interest is confirmed.

7. In the facts and circumstance of the case, as the value at the time of clearance of the goods, was not known to the appellant, no penalty is imposable as there was no intention to evade payment of duty. Therefore, the penalty imposed on the appellant is set aside.

8. In these terms, the appeal is disposed of in the above terms.

(Dictated and pronounced in the court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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