# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 85953 of 2015**

(Arising out of Order-in-Appeal No. CD/6/Bel/2015 dated 01.01.2015 passed by the Commissioner of Central Excise (Appeals).

**Hyva (India) Pvt. Ltd.** **.... Appellant**
E1-125, MIDC, TTC Industrial Area,
Mahape, Navi Mumbai- 400 710.

Versus

**Commissioner of CGST and Central Excise, Belapur** **.... Respondent**
1st Floor, CGO Complex,
CBD Belapur, Navi Mumbai- 400 614.

## Appearance:

Shri Vikash Agarwal, Chartered Accountant for the Appellant

Shri L.B. D'Coasta, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/87425/2024**

Date of Hearing: 28.11.2024

Date of Decision: 28.11.2024

***Per: S.K. MOHANTY***

Heard both sides and examined the case records.

2. Briefly stated, the facts of the case are that the appellants are engaged in the manufacture of excisable goods namely, Hydraulic Cylinder, Bodies for Motor Vehicles for transportation goods and parts and accessories of motor vehicles, falling under Chapter Heading 84.12, 87.07 and 87.08, respectively, of the First Schedule to the Central Excise Tariff Act, 1985. For clearance of the said excisable

goods to the independent buyers, the appellants determine the assessable value as per the provisions contained in Section 4 of the Central Excise Act, 1944 and discharge the Central Excise duty liability on such assessable value. The appellants also remove the said excisable goods to their sister unit(s) for manufacture of the further articles. For clearance of the goods to their sister units, the appellants determine the assessable value on the basis of sale made to the independent buyers and on such value, they use to discharge the Central Excise duty liability. Adoption of value for clearance of the goods to the sister units of the appellants was disputed by the department. The department had contended that the valuation should be done by the appellants under Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. On the basis of such understanding, show cause proceedings were initiated against the appellants, which were culminated into the adjudication order dated 27.05.2013 passed by the learned Commissioner of Central Excise and Customs, Belapur, in confirming the proposals made in show cause notice dated 27.01.2012. On appeal against the said adjudication order dated 27.05.2013, the learned Commissioner (Appeals), vide impugned order dated 01.01.2015, has upheld confirmation of the adjudged demands and rejected the appeal filed by the appellants. Feeling aggrieved with the impugned order dated 27.05.2013, the appellants have preferred this appeal before the Tribunal.

3. The appellants have assailed the impugned order on the ground that they had paid the entire differential duty along with interest on detection of mistake by the inspecting officers of the department. Thus, it was contended that since, the Central Excise duty along with interest liability was paid prior to date of issuance of show cause notice, the benefit provided under sub-section (2) of Section 11A of the Central Excise Act, 1944 should be available to the appellants.

4. On examination of the case records, we find that the factory premises of the appellants was inspected by the department on 15.10.2010 and thereafter, the appellants on 31.01.2011,

25.02.2011 and 28.02.2011 had deposited the differential duty amount and also paid the interest amount on 12.04.2011; and also intimated the fact of payment of such amount to the Central Excise Department. However, the department had issued the show cause notice on 27.01.2012, calling upon the appellants to deposit the differential duty along with interest. Based on the proposals made in the show cause notice, the learned adjudicating authority had confirmed the adjudged demands on the appellants. We find that in the adjudication order dated 27.05.2013, the learned original authority had appropriated the differential amount of duty along with interest paid by the appellant prior to issuance of the show cause notice. Section 11A of the Central Excise Act, 1944 provides for recovery of duties not-levied or not-paid or short-levied or short-paid. The mechanism has been provided in the said statue for recovery of the amount of duty from the assessee. However, sub-section (2) of Section 11A *ibid*, provides that the short-levied or short-paid duty, if it has been deposited by the assessee on his own ascertainment, or on the basis of the duty ascertained by the Central Excise Officer, before service of notice on him under sub-Section (1) *ibid*, then no show cause notice shall be issued by the department. In the present case, it is an admitted fact on record that the appellants had *suo moto* ascertained the duty liability and the interest payable thereon for delayed payment of the duty amount and paid the same into the government exchequer, with due intimation to the Central Excise department. Thus, under such circumstances, as per the provision of sub-section (2) of Section 11A *ibid*, there was no requirement of issuance of any show cause notice, specifically seeking for imposition of penalty on the assessee. Further, it is also an admitted fact on record that the duty amount ascertained and paid by the assessee is the actual duty liability and beyond such liability, no further duty had been ascertained by the Central Excise department, which is evident from the order portion in the original order, wherein while confirming the duty demand, the original authority had appropriated that much of duty along with interest, which were paid prior to issuance of show-cause notice as the deposit of duty and interest as required to be deposited under the statute. Therefore, in our considered view, there is no merits in the orders passed by the authorities below in confirming the penalty demand on the appellants.

5. In view of above, the impugned order, insofar as it has upheld confirmation of the penalty demand under Section 11AC *ibid* on the appellants is set aside and the appeal to such extent is allowed in favour of the appellants.

(Dictated and pronounced in open court)

**(S.K. Mohanty)**
**Member (Judicial)**

**(M.M. Parthiban)**
**Member (Technical)**

SM