CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85538 of 2017

(Arising out of Order-in-Appeal No. CD/766/BEL/2015 dated 19.10.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

M/s Savita Oil Technologies Ltd. **.... Appellant**
Plot No. 17-17A, Thane Belapur Road,
Vashi, Navi Mumbai – 400 703

Versus

Commissioner of CGST & Central Excise, Navi Mumbai **.... Respondent**
16th Floor, Satra Plaza, Sector – 19D,
Palm Beach Road, Vashi,
Navi Mumbai – 400 705

APPEARANCE:

Shri Mehul Jivani, Advocate for the Appellant

Shri Hemant Kumar Tantia, 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/85268/2026

Date of Hearing: 04.02.2026
Date of Decision: 04.02.2026

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellant is engaged, *inter alia*, in the manufacture of Lubricating Oils, falling under Chapter 27 of the First Schedule to the Central Excise Tariff Act, 1985. In respect of the said final products packed in container of capacity more than 20 liters, the assessable value was required to be determined in terms of Section 4 of the Central Excise Act, 1944. During the disputed period, the appellant had cleared the lubricating oil from the factory premises to the depot, for onward sale to the customers. Since, the price at which the said goods were required to be sold at the depot, during the material time of removal of the same from the factory was not available, the appellant had opted for

provisional assessment in terms of Rule 7 of the Central Excise Rules, 2002. The provisional assessments for the period July 2014 to September 2014 were finalized by the department in the original order dated 24.12.2014. In some of the cases of provisional assessment, the duty was paid by the appellant at higher side and in some other cases, the duty was short paid, which amounted to Rs.18,69,144/-. The appellant had contended that the short-paid duty should be adjusted against the excess paid duty, and the remaining left over amount should be eligible for refund. However, the contention of the appellant was not accepted by the Department. Accordingly, the short-paid duty amount of Rs.18,69,144/- was confirmed in the adjudication order dated 24.12.2014 along with interest. The said demand was also upheld by the learned Commissioner (Appeals) vide the impugned order dated 19.10.2015. Feeling aggrieved with the impugned order dated 19.10.2015, the appellant has preferred this appeal before the Tribunal.

3. It is an admitted fact on record that the provisional assessments opted by the appellant and allowed by the Department for the period July 2014 to September 2014 were finalized on 24.12.2014. Since there was excess paid duty in some of the cases and short-paid in other cases, the appellant had adjusted the short-paid duty from the excess paid duty. Such *modus operandi* adopted by the appellant was objected to by the Department on the ground that in respect of excess paid duty, they are only eligible for grant of refund by taking recourse of the provisions contained in the Central Excise statute. With regard to short-paid duty, it was held by the authorities below, that under Rule 7 of the Central Excise Rules, 2002, the appellant is required to pay the differential duty along with interest and there is no provision prescribed under the statute for adjustment of the short-paid duty against the excess paid duty during the course of provisional assessment. Though the refund provisions contained in the Central Excise statute are applicable for claiming the excess duty paid as refund, but the provision regarding adjustment of the excess paid duty vis-à-vis the short-paid duty, there is no restriction in statute to opt for such adjustment mechanism. Since the final assessment order was passed on 24.12.2014 and immediately thereafter the appellant had made the adjustment of the short-paid duty against the excess paid duty, such adjustment, in our considered view, can be termed as proper and justified.

4. We find that in case of *Rajasthan Spinning & Mills Ltd. – 2016 (9) TMI 481 – CESTAT NEW DELHI*, this Tribunal has held that short-paid duty can be adjusted against the excess paid duty. Further, in the case of appellant itself, this Tribunal in the Final Order No. A/87940/2018 (Excise Appeal No. 87530 of 2018) has allowed the benefit of adjustment of such short-paid duty against the excess paid duty. The relevant paragraph recorded in the said order is quoted herein below: -

> *"6. The short issue for determination is whether the duty short paid by the appellant amounting to Rs.6,44,517/- during the period from July 2005 to March 2005 would be adjusted against the refund of Rs.10,79,333/- claimed by the appellant for excess amount of duty paid. It is the contention of the Revenue that since the assessment was not provisional in accordance with Rule 7 of the Central Excise Rules, 2002, therefore, the appellant is precluded from adjusting the excess/shortage of duty against their liability. I find that the adjudicating authority has categorically held that the self-assessment undertaken by the appellant was on provisional basis. Also, from the records, particularly the letter dated June 2001 and the ER-1 returns filed from time to time to the department, the appellant has categorically claimed that their assessment was provisional and no communication was addressed by the Revenue denying the said facility of assessment on provisional basis. In these circumstances, I do not find merit in the observation of the learned Commissioner (Appeals) that the assessment was since not provisional, therefore, the observation of the learned Commissioner (Appeals) that the assessment was since not provisional, therefore, the appellant is not entitled to adjust the duty short paid against the amount excess paid during the particular period of assessment. In the result, the appellant is entitled to adjust the duty short paid during the relevant period with that of excess paid. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law to the appellant."*

5. Further, we also find that in an identical set of facts, the learned Commissioner of Central Excise & Service Tax (Appeals), Mumbai has allowed the appeal vide order dated 23.03.2018 in favour of the appellant, holding that such adjustment is permissible under the statute.

6. During the course of hearing, learned Counsel for the appellant had submitted a work-sheet, mentioning the duty calculation done by the Department vis-à-vis those figured out by the appellant. By referring to such chart, he has submitted that short-paid duty as per the adjudication order is not proper and it should have been Rs.15,32,486/-. Since the arithmetical accuracy about the computation was raised for the first time by the appellant at this juncture, we are of view that such aspect is required to be considered by the original authority. Therefore, the appeal, to the limited extent of computation of correct duty, is remanded to the original authority for passing of a fresh order.

7. In view of the foregoing discussions, the impugned order to the extent it has held that short-paid duty cannot be adjusted against the excess paid duty, is set aside and appeal to that extent is allowed in favour of the appellant. With regard to the limited purpose for computation of the short-paid duty amount as per the above referred work-sheet, the matter is remanded to the original authority for *de novo* adjudication. The principles of natural justice should be adhered to by the original authority while passing the order afresh.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha