IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.2732 of 2010

The Commissioner of Central Excise,
Chennai II Commissionerate,
No.692 MHU Complex, Anna Salai,
Nandanam, Chennai - 600 035 ... Appellant/Appellant

vs.

M/s. Lucas TVS Ltd.,
Padi, Chennai - 600 050 ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 35G of The Central Excise Act, 1944, against the order passed by the CESTAT in its final order No.1899/09, dated 09.12.2009 in Appeal No.E/124/2003 (by the Department) on the file of The Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Sastri Bhavan, Annexe I Floor, 26 Haddows Road,Chennai 600 006 against the order of the Commissioner of Central Excise(Appeals),26/1, Mahatma Gandhi Road, Chennai 600 006 in A.No.23/2002 (M-II) dated 20/12/2002 against the order of the Asst Commissioner of Central Excise III Division, Chennai II Commissionerate, 473, Anna Salai, Chennai-600 035 in C.No.V/87/15/34/99-PF dated 29/11/2001.

For Appellant : Mr. S.Xavier Felix
For Respondent : Mr. Lakshmi Kumaran

J U D G M E N T
(Judgment of the Court was delivered by S.Vimala, J.,)

This Civil Miscellaneous Appeal has been filed under Section 35G of The Central Excise Act, 1944, (hereinafter will be referred to as “the Act”) against the order passed by the Customs, Excise and Service Tax Appellate Tribunal (in short “the CESTAT”), South Zone, Chennai, in the Final Order No.1899/09, dated 09.12.2009.

Brief facts:-

2. M/s. Lucas TVS Ltd., / assessee / respondent herein is the manufacturers of 'Wiper Motor Assembly', (in addition to other goods) falling under Tariff Heading No.8512.00. The Revenue classified the same under Tariff Sub Heading No.8501.00. There was a difference in the rate of excise duty

between the Tariff Sub-Heading No.8501.00 and 8512.00, and the difference specifically was that, Tariff on Sub-Heading No.8512.00 was higher. Hence, after hearing, Order-in-Original (O-in-O) No.7/95, dated 09.01.1995, was passed, directing the respondent herein to pay a sum of Rs.34,30,799/-, (Rs.2,38,538/-, for the period from 01.01.1994 to 31.01.1994, Rs.13,26,752/- for the period from 01.02.1994 to 30.06.1994 and Rs.18,65,509/- for the period from 01.07.1994 to 30.12.1994) being the differential duty involved in the clearance of the said goods. This order also communicated, through the letter in Proceedings No.C.No.V/85/15/12/94-T-1, dated 10.02.1995.

2.1. Against the above Order-in-Original No.7/95, dated 09.01.1995, the respondent herein appealed before the Commissioner (Appeals). The Commissioner (Appeals), vide his Order-in-Appeal (O-in-A) No.128 and 129 of 1995 (M), dated 20.06.1995, set-aside the Order-in-Original No.7 of 1995, dated 09.01.1995 and confirmed the classification of the said goods under T.S.H.No.8501.00.

2.2. As against the above order, the appellant / Revenue filed an Appeal before the CESTAT, Chennai. The CESTAT, vide its Order Nos.395 and 396/1997, dated 27.01.1997, remanded the matter back to the Commissioner (Appeals). The Commissioner (Appeals), vide his Order-in-Appeal (O-in-A) Nos.148 and 149 of 2000 (M-II), dated 26.12.2000, confirmed the classification of the said goods under T.S.H.No.8512.00 and confirmed the demand of duty of Rs.34,30,799/-, as ordered in Order-in-Original (O-in-O) No.7 of 1995, dated 09.01.1995.

2.3. The duty amount of Rs.34,30,799/- was determined under the Order-in-Original No.7 of 1995, dated 09.01.1995, before the date, on which, the Finance Bill, 1995, got the assent of the President. The assent of the President for the Finance Bill, 1995, was accorded on 26.08.1995.

2.4. The interest payable was worked out under Section 11AA of the Act, with effect from 26.08.1995 onwards, i.e., from the date on which the Finance Bill, 1995, got the approval of the President. The interest amount of Rs.40,44,772/- was demanded under Range Office Letter O.C.No.1078/2001, dated 24.02.2001, and Order-in-Original No.31 of 2001, dated 29.11.2001, was passed by the JAC (Joint Action Council). In the Order-in-Original, the JAC confirmed the demand of Rs.40,21,272/-, being the interest payable for the duty amount of Rs.34,30,799/-, as determined in Order-in-Original No.9 of 1995, dated 09.01.1995, under Section 11AA of the Act.

2.5. As against the order, dated 09.01.1995, the respondent filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals), vide its Order-in-Appeal No.189 of 2002 (M-11), dated 20.12.2002, set-aside the Order-in-Original No.31 of 2001, dated 29.11.2001. Against the above Order-in-

Appeal No.189 of 2002 (M-11), dated 20.12.2002, the Revenue had filed an appeal before the CESTAT. The CESTAT, in its final Order No.1899 of 2009, dated 09.12.2009, had relied upon an order of the Bombay High Court, in the case of Blue Star Limited v. Union of India and others, reported in 2009-TIOL-HC-MUM : 2010 (250) E.L.T. 179 (Bom.) and upheld the impugned order and rejected the appeal filed by the Revenue. Challenging the same, this Appeal has been filed by the appellant / Revenue.

3. At the time of admission of this Appeal, this Court had framed the following substantial questions of law:-

> "1. In the facts and circumstances of the case, is it not the demand of interest on duty confirmed under Section 11AA of the Central Excise Act, 1994, w.e.f. 26.08.1995 onwards on the respondent is valid in law when proviso to Sec.11AA empowers such demand in respect of duty liability arisen prior to introduction of Sec.11AA? and
>
> 2. Whether the CESTAT has not erred in law in holding that duty liability arises and commences from the date of the order of determination and not from the date of the actual liability especially when an order of determination always dates back to the actual date of liability?"

4. The issue involved, in this appeal, relates to the interest payable on delayed payment of duty and more specifically on the date from which the interest is payable. The incidental / consequential question to be considered is, when the duty becomes payable, i.e., whether, as on the date when the duty becomes due or the date of the original order, determining the liability, or as on the date of the subsequent orders, either reducing or enhancing the tax liability. The relevant section dealing with 'Interest on delayed payment of duty' is Section 11AA of the Act, which stood, before substitution by the Act 8 of 2011, reads as under:-

> " '11AA. Interest on delayed payment of duty.- (1) Subject to the provisions contained in Section 11AB, where a person chargeable with duty determined under sub-section (2) of Section 11-A, fails to pay such duty within three months from the date of determination, he shall pay, in addition to the duty, interest at such rate not below ten per cent and not exceeding thirty-six per cent, per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette on such duty from the date immediately after the expiry of the said period of three months till the date of payment of such duty:
>
> Provided that where a person chargeable with

duty determined under sub-section (2) of section 11-A before the date on which the Finance Bill, 1995 receives the assent of the President, fails to pay such duty within three months, from such date, then, such person shall be liable to pay interest under this section from the date immediately after three months from such date, till the date of payment of such duty.

Explanation 1.-- Where the duty determined to be payable is reduced by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, the Court, the date of such determination shall be the date on which an amount of duty is first determined to be payable.

Explanation 2.-- Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, the Court, the date of such determination shall be,-

(a) for the amount of duty first determined to be payable, the date on which the duty is so determined;

(b) for the amount of increased duty, the date of order by which the increased amount of duty is first determined to be payable;

(c) for the amount of further increase of duty, the date of order on which the duty is so further increased.

(2) The provisions of sub-section (1) shall not apply to cases where the duty becomes payable on and after the date on which the Finance Bill, 2001 receives the assent of the President.'"

4.1. Under this Section, duty is payable after the expiry of three months from the date of determination of duty. In a case where the duty is determined prior to coming into force of this provision, the proviso lays down that interest would be payable after the expiry of three months from the date on which the Finance Bill, 1995, received the presidential assent.

5. Section 11AA of the Act, came to be interpreted by a Division Bench of the Bombay High Court, in the case of Blue Star Limited's case, cited supra, where-under, it has been held as follows:-

"17. What is the effect of setting aside the original order and remanding the matter for denovo consideration. Setting aside an order would mean that there is no order and a party is relegated to fresh adjudication. The stage of an adjudication cannot be said to be a determination. An adjudication will culminate in an order. That order would be the determination and/or ascertainment of duty. The relevant date for commencement of time, the interest would be from the date the duty is determined if not paid within three months. Once there be an order, setting aside the entire order of determination there is no ascertained duty payable. In the instant case, therefore, though there was original order passed on 14th June, 1993 that was set aside on 14th July, 2000. The matter was before the A.O., for fresh determination on which an order came to be passed on 22nd March, 2002 and consequently the duty came to be ascertained on 22nd March,, 2002. Duty was paid on 17th July, 2002. Once the duty was ascertained on 22nd March, 2002 no interest could have been demanded under sub-section (1) of Section 11AA in view of sub-section (2) as inserted in Section 11AA on 11th May, 2001."

6. From the reading of the above decision (Blue Star Limited's case, cited supra), it is clear that, duty is payable only when the liability is ascertained and that the liability to pay interest arises only on the determination of that duty / liability and also if the ascertained duty is not paid within a period of three months from the date of ascertainment.

7. Therefore, the contention of the Revenue that the determination of duty liability takes effect from the date on which the liability arises and not from the date, on which, the order of termination is passed, is incorrect and is liable to be rejected.

8. So far as this case is concerned, the contention of the learned counsel for the Assessee is that, Section 11AA of the Act providing for charging of interest, came into effect only from 26.05.1995 (as per Finance Act, 1995) and as the tax liability of the Assessee was pertaining to the periods, 01.01.1994 to 31.01.1994 and 01.07.1994 to 30.12.1994, and that the amount of duty payable was remaining undetermined till the Order-in-Original was confirmed by the Order-in-Appeal, dated 26.12.2000 (which was communicated later) and that within three months, as the duty has been paid by the assessee, the question of payment of interest does not arise.

9. We find no reason to differ with the contention of the learned counsel for the Assessee.

10. The contention of the Revenue is that the order determining the liability, once passed drags the liability back to the date of actual liability and therefore, interest is payable from 09.01.1995.

10.1. The demand made for interest for the period from 26.08.1995 to 31.03.2001 has been rightly rejected by the Commissioner (Appeals) and as well as by the CESTAT, Chennai, is perfectly valid and is in accordance with the judgment rendered in Blue Star Limited's case, cited supra, and there are no grounds to interfere with the same. Hence, this Civil Miscellaneous Appeal stands dismissed.

sd/-

Assistant Registrar(CO)

/TRUE COPY/

Sub-Assistant Registrar

srk

To

1. CESTAT, South Zone Bench,
Sastri Bhavan, Annexe I Floor,
26 Haddows Road, Chennai 600 006.

2. The Commissioner of Central Excise(Appeals),
26/1, Mahatma Gandhi Road, Chennai 600 006.

3.The Asst Commissioner of Central Excise III,
Division Chennai II, Commissionerate,
473, Anna Salai, Chennai 600 35.

4. The Commissioner of Central Excise,
Chennai II, Commissionerate,
692, MHU Complex, Anna Salai,
Nandhanam, Chennai 600 035.

+1 CC to MR.S.Xavier Felix Advocate. SR.NO. 66728

C.M.A.No.2732 of 2010

CO-TEJ
JD 12/01/2016