

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.M.Nos.17624-25-CII of 2013 and  
Central Excise Appeal No.49 of 2012(O&M)  
Date of Order: 12.09.2013

M/s Jai Bharat Maruti Ltd.

...Appellant

Versus

Commissioner of Central Excise, Delhi-III, Vanijya  
Nikunj, Udyog Vihar, Phase-Gurgaon(Haryana).

..Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA  
HON'BLE MR. JUSTICE MEHINDER SINGH SULLAR

Present: Mr. R.Santhanam, Advocate, with  
Mr. Sandeep Goyal, Advocate,  
for the applicant-appellant  
Mr. Sukhdev Sharma, Advocate,  
for the respondent.

**RAJIVE BHALLA, J (Oral)**  
**C.M.No.17624-CII of 2013**

Allowed as prayed for.

Annexures -12 to A-18 are taken on record.

**C.M.No.17625-CII of 2013**

Prayer in this application is for early hearing, on the ground that the Delhi High Court, has reversed the common order passed by the Tribunal against the appellant and another company.

Counsel for the respondent states that he has no objection, if the appeal is taken on Board and is decided along with the application.

Ordered accordingly.

**Central Excise Appeal No.49 of 2012**

The appeal challenging order dated 20.07.2012 (Annexure A-1), passed by the Customs, Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi (CESTAT), was admitted for final hearing on the following substantial questions of law:-

“(i) Whether the relevant date of payment of the duty

*consequent to revision of price is the date when the goods are removed from the factory premises or the date when differential duty is paid?*

- (ii) *That if the appellant was liable to pay duty on the date of removal of goods from the factory premises, whether the appellant is liable to pay interest from the date of removal of goods from the factory premises?*
- (iii) *Whether the show cause notice dated 28.10.2004 claiming interest for a period of more than one year is tenable in terms of Section 11A read with Section 11AB of the Central Excise Act, 1944?"*

Counsel for the appellant submits that the questions so framed arise from a common order passed by the CESTAT against the appellant and another assessee M/s Hindustan Insecticides Ltd. The appellant filed the present appeal before this Court whereas M/s Hindustan Insecticides Ltd., filed an appeal before the Delhi High Court. The order passed by CESTAT against M/s Hindustan Insecticides Ltd. has been set aside by the Delhi High Court in **Hindustan Insecticides Ltd. v. Commissioner Central Excise, LTU** (Central Excise Act Case Nos.48/202 & 49/2012), decided on 02.08.2013. Counsel for the appellant prays that in view of this fact the appeal may be allowed and the impugned order may be set aside, in terms of the order passed by the Delhi High Court.

Counsel for the revenue, however, submits that order passed by the High Court of Delhi, is incorrect as it has not taken into consideration provisions of Section 11A read with Section 11AB of the Central Excise Act, 1944 and as, admittedly, duty was paid after delay, the appeal should be dismissed and reliance should not be placed upon judgment of the High Court of Delhi.

We have heard counsel for the parties, perused the impugned order and find no reason to differ from the opinion recorded by the Delhi High Court in **Hindustan Insecticides Ltd. v. Commissioner Central Excise, LTU** (supra). The CESTAT, vide a common order, dismissed appeals filed by the appellant and M/s Hindustan Insecticides Ltd. The order passed by CESTAT has been reversed by the Delhi High Court, by relying upon judgments in **Kwality Ice Cream Company and Another v. Union of India and others, (2012) 281 ELT, 507** and **Commissioner v. TVS Whirlpool Limited, 2000(119) ELT A177 (SC)** and holding that as the period of limitation that applies to recovery of the principal amount shall also apply to the claim for interest thereon, the demand is time barred. The opinion recorded by the Delhi High Court in **Kwality Ice Cream Company and Another v. Union of India and others** (supra) was followed by the Punjab and Haryana High Court in **Commissioner, Central Excise Commissionerate v. VKN Industries Private Limited (CEA No.67/2011 (O&M), decided on 17.04.2012)**, by holding as follows:-

*“6. There is no dispute that assessee has paid the differential duty on supplementary invoices regularly and has shown the same in the ER-I returns, which were filed regularly before the department, therefore, issuance of show cause notice for interest on the delayed payment should also be within a period of one year as stipulated under Section 11-A of the Act. Therefore, department has absolutely no jurisdiction to issue show cause notice after expiry of the period of limitation for interest on the delayed payment for the period from 2002-03 to 2005-06. Division Bench of Delhi High Court in the case of Kwality Ice Cream*

*Company and another Vs. Union of India and others, W.P.(c) 14414-15/2006 decided on 18.1.2012 has also held that period of limitation, unless otherwise stipulated by the statute, which applies to a claim for the principal amount should also apply to the claim for interest thereon.”*

A similar view has been taken by the Bombay High Court in Central Excise Appeal No.116/2011, **Commissioner of Central Excise Mumbai-III v. Supreme Petrochem Limited** and the Gujarat High Court in Tax Appeal No.56/2011, **Commissioner of Central Excise and Customs, Vadodara-II v. Gujarat Narmada Fertilizers Company Limited, 2012(285) ELT 336(Guj.)**. The respondents do not allege much less assert that any other period of limitation applies or that short payment was made due to fraud, collusion etc. and, therefore, while following the aforesaid judgments, we find no reason to accept arguments addressed by counsel for the revenue and have no hesitation in holding that period of one year would apply to the present case.

In view of what has been stated hereinabove, we answer the questions of law in favour of the appellant, set aside the impugned order and allow the appeal, in terms of judgment in **Hindustan Insecticides Ltd. v. Commissioner Central Excise, LTU** (supra).

(RAJIVE BHALLA)  
JUDGE

September 12, 2013  
nt

(MEHINDER SINGH SULLAR)  
JUDGE