

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CEA No.30 of 2013 (O&M)  
Date of decision: 31.01.2014**

**M/s Neel Metal Products Limited**

**.....Appellant**

**Vs.**

**Commissioner of Central Excise, Delhi III**

**.....Respondent**

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL  
HON'BLE MS. JUSTICE ANITA CHAUDHRY**

Present: Mr. Sandeep Goyal, Advocate for the appellant.

Mr.Sukhdev Sharma, Advocate for the respondent.

**Ajay Kumar Mittal,J.**

**CM No.25833-CII of 2013**

1. Allowed as prayed for.

**CM No.25834 CII of 2013**

2. This is an application under Section 151 of the Code of Civil Procedure for disposal of the appeal in terms of the order dated 12.9.2013 passed in CEA No.49 of 2012 (*M/s Jai Bharat Maruti Limited v. Commissioner of Central Excise, Delhi III, Vanijya Nikunj, Udyog Vihar, Phase-Gurgaon (Haryana)*).

3. Notice of the application was issued to the learned counsel for the respondent on 8.1.2014. Mr. Sukhdev Sharma, Advocate appears.

4. At the joint request of learned counsel for the parties, the main appeal is taken up today for hearing.

**CEA No.30 of 2013**

5. The assessee has preferred this appeal under Section 35G of the Central Excise Act, 1944 (in short, “the Act”) for setting aside the final order dated 20.7.2012, Annexure A.1 in Appeal No.E-325 of 2010 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, (in short, “the Tribunal”) claiming following substantial questions of law:-

- i) Whether on the facts and in the circumstances of the case, the Tribunal ought not to have followed the earlier binding decision of coordinate bench of the Tribunal in the case of *Emco Limited v. CCE, Mumbai* 2011-TIOL-1585-CESTAT-MUM and failure to follow the same has not vitiated the impugned order which is unsustainable in law?
- ii) Whether on the facts and in the circumstances of the case, the Tribunal ought not to have rectified its own mistakes apparent from record and ought not to have recalled its impugned judgment and order dated 20.7.2012 and ought not to have referred the matter to a larger bench if at all a different view was sought to be taken?
- iii) Whether on the facts and in the circumstances of the case, the mistakes of fact and law committed by the Tribunal ought not to have been rectified by it by recalling its order and by adopting/following the earlier decision of coordinate bench on the same issue in *Emco Limited v. CCE, Mumbai* 2011-TIOL-1585-CESTAT-MUM?
- iv) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that there is no time limit nor any show cause notice required for levy and recovery of interest under section 11AB against the assessee?
- v) Whether on the facts and in the circumstances of the case, the Tribunal ought not to have taken into account the fact that there was no provisional assessment and the final determination of price and assessable value and payment of

duty thereon had already taken place and the question of charging interest years after such differential duty had already been paid does not arise?

- vi) Whether on the facts and in the circumstances of the case, the Tribunal ought not to have been guided by the basic principle that even in cases where there is no specific time limit prescribed by the statute for issue of notice or for recovery of any sum due, the notice as well as action/order must be within a reasonable time limit as held by the Supreme Court in *State of Punjab v. Bhatinda District Coop Milk Producers Union Limited*, reported in (2007) 217 ELT 325 and the fact that the Supreme Court itself in *CCE v. TVS Whirlpool Limited* (2000) 199 ELT A 177 has held that what applies to tax must apply equally to interest and therefore both the demand of tax and levy of interest can only be within the normal statutory time limit of one year prescribed under Section 11A of the Central Excise Act?
- vii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in relying upon a sales tax case involving UP Sales tax when the statutory provisions of the Central Excise Act and Sales Tax Act are not common on levy of tax and interest?
- viii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the orders of lower authorities and by holding that extended period of limitation could be invoked for charging interest under Section 11AB in the facts of this case, ignoring the assessee's bonafide action and conduct and the fact that extended period under the proviso to Section 11A and penalty under section 11AC are based on same pre-requisites none of which is attracted in the present case, as rightly accepted by the lower authorities for not levying any penalty?
- ix) Whether on the facts and in the circumstances of the case, the Tribunal was justified in not following the decisions of

courts and Tribunals placed before it on the question of extended period of limitation not being invocable for levy of duty or interest and thereby passing the impugned order to make out a new case against the assessee which the revenue did not and for this reason also, the impugned order is liable to be vacated?

- x) Whether on the facts and in the circumstances of the case, the Tribunal being a final fact finding body at the appellate stage could not have functioned as original authority to give its own findings of fact without records and documents of the revenue placed before it and when no such finding had been given by the original authority, thereby causing grave injustice/prejudice to the appellant for which the impugned order is unsustainable?
- xi) Whether on the facts and in the circumstances of the case, the Tribunal was justified in ignoring the definition of 'relevant date' in section 11A(3) (ii) (b) under which the date of adjustment of duty paid provisionally after final assessment thereof is required to be taken as the only basis for raising a demand if any within the normal period of limitation and the same applies for interest also and the impugned order is unsustainable as being beyond the scope of express statutory provisions in the Act?

6. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The appellant is a company incorporated under the Companies Act, 1956 having its registered office at New Delhi. It is engaged in the business of manufacture and sale of auto components, sheet metal components and tools falling under Central Tariff Heading 87081090, 82073000 of the first schedule of the Central Excise Tariff Act, 1985. The appellant has long term contracts with the buyers of its finished excisable goods namely Maruti Suzuki India

Limited and other automobile manufacturers. The question is whether the liability to pay interest on differential excise duty already paid at the time of issue of supplementary invoices would continue and if so can such interest liability be demanded beyond the normal period of limitation of one year from the date of supplementary invoice under Section 11A read with Section 11AB of the Act. It was issued seven different show cause notices for different periods and the demand of interest was raised in some cases within the normal period of one year which the assessee accepted and paid under protest while in other cases where extended period of limitation had been invoked to raise the demand for interest, the assessee agitated the same in appeal before the Tribunal even though the amount had to be paid under protest because of coercive action or recovery from the revenue, which had been dismissed by the Tribunal. After considering the matter, the Additional Commissioner of Central Excise passed order dated 30.10.2009, Annexure A.6 confirming the demands of interest as per show cause notices. Against the said order, the appellant filed appeal before the Commissioner of Central Excise (Appeals) Gurgaon who upheld the order and dismissed the appeal vide order dated 19.11.2010, Annexure A.8. Aggrieved thereby, the appellant filed appeal before the Tribunal which was dismissed vide order dated 20.7.2012, Annexure A.1 impugned herein. Hence the present appeal.

7. We have heard learned counsel for the parties and perused the record.

8. Learned counsel for the appellant submits that the present petition is squarely covered in favour of the appellant by the decision of this Court in *M/s Jai Bharat Maruti Limited*'s case (supra) and may be disposed

of in the same terms. In the said judgment, it has been held as under:-

“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).***”

Learned counsel for the respondent does not dispute the applicability of the above mentioned judgment.

9. In view of the above, the substantial questions of law are answered in favour of the appellant and against the revenue. The appeal stands allowed.

**(Ajay Kumar Mittal)**  
**Judge**

**January 31, 2014**  
**'gs'**

**(Anita Chaudhry)**  
**Judge**