

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Zonal Bench, O-20, NMH Compound

Ahmedabad

Central Excise Appeal No.13185 of 2013-SM

Arising out of the order-in-appeal No.125/2013 (Ahd-II)CE/AK/Commr(A)/Ahd dated 19.6.2013 passed by the Commissioner(Appeals), Central Excise, Ahmedabad II.

Sagar Drugs and Pharmaceuticals P. Ltd .. Appellant

Vs.

C.C.E., Ahmedabad II .. Respondent

Appearance:

Present Shri Aditya Tripathi, Advocate for the appellant

Present Dr. J. Nagori, A.R. for the Respondent-Revenue

Coram: Honble Dr. D.M. Misra, Member (Judicial)

Date of hearing:7.2.2017

Date of pronouncement:25.5.2017

Final Order No. 11205/2017

Per Dr. D.M. Misra:

Heard both sides. This appeal is filed against the Order-in-Appeal No. 125/2013 (Ahd-II)CE/AK/Commr(A)/Ahd dated19.6.2013 passed by the Commissioner(Appeals), Central Excise, Ahmedabad II.

2. Briefly stated the facts of the case are that during the period from March 2003 to February 2007, the appellant had cleared the inputs as such on payment of duty, adopting transaction value, instead of reversing the credit availed on such inputs at the time of its receipt in the factory. Consequently, demand notice was issued for recovery of the excess duty of Rs.3,07,040/- which was recovered by them from the customers under Section 11D(2) of the CEA, 1944. On adjudication, the demand was confirmed with penalty and interest. Aggrieved by the said order, the appellant filed appeal before the Id. Commissioner (Appeals) who in turn, set aside the demand for the period from March 2002 to Feb.2003. Aggrieved by the said order , the appellant filed this appeal before this forum.

3. Ld. Advocate Shri Aditya Tripathi for the appellant submitted that under a bona fide mistake while clearing the inputs as such, they paid duty on the transaction value which was higher than the amount of credit availed on the inputs as such. It is his contention that even though the law has been changed with effect from 1.3.2003, they continued to pay duty on the transaction value of the inputs cleared as such. He submitted that excess amount collected from the customers as duty through invoices had already been paid to the Department , therefore, directing to deposit the same again is contrary to the law prescribed u/s 11D of the CEA, 1944. In support, the Id. Advocate relied on the judgement of the Honble Rajasthan High Court in the case of Union of India vs. Shivam Metals 2015 (326) ELT 558 (Raj.); Larger Bench decision in the case of Unison Metals Ltd. vs. C.C.E., Ahmedabad I 2006 (204) ELT 323 (Tri L.B.) and the judgment of the Honble Gujarat High Court in the case of Pratibha Syntex Ltd. vs. Union of India 2013 (287) ELT 290 (Guj.). Further, he has submitted that since all the facts have been disclosed to the Department and the present demand relates to recovery of the excess amount collected from the customers but separately not deposited with the Department u/s 11D invoking extended period of limitation, hence, the demand is barred by limitation. He submits that even though no time limit has been prescribed for recovery of the amount u/s 11D of the CEA, 1944, however, it has been consistently held by the judiciary that in the absence of any prescribed time limit, recovery could be effected within reasonable period of time. It is his contention that show cause notice

issued on 14.9.2007 for recovery of the credit for the period from March 2003 to February 2007, is beyond reasonable period of time, hence, cannot be sustainable.

5. Per Contra, Ld. A.R. for the Revenue has submitted that the issue is no more res integra and covered by the judgment of the jurisdictional High Court in the case of C.C.E., Ahmedabad II vs. Inductortherm (I) Pvt. Ltd 2012 (283) ELT 359 (Guj.). Ld. A.R. submitted that in similar circumstances, when the inputs were cleared as such at higher rate, the Honble High Court observed that even though the duty has been paid at higher rate but the amount collected from the customers is required to be deposited with the Government u/s 11D of the CEA, 1944.

6. I have considered the submissions of both the sides and perused the record. I find that the Gujarat Honble High Court after considering the relevant provision in similar facts and circumstances in Inductortherm (I) Pvt. Ltd.s case observed that the excess amount collected from the customers is required to be deposited u/s 11D of the CEA, 1944. Their Lordship had observed as follows:

18.?With this background, we if peruse Section 11D of the Central Excise Act, 1944, it emerges that under sub-section (1) thereof, every person who is liable to pay duty under the Act or the Rules made thereunder and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods from the buyer of such goods, in any manner as representing duty of excise shall forthwith pay the amount so collected to the credit of the Central Government. Sub-section (2) of Section 11D provides, inter alia, that if such amount is not credited, the Central Excise Officer may issue a notice requiring such person to show cause why the same should not be paid by him to the Central Government. Sub-section (3) of Section 11D authorizes the Central Excise Officer to determine the amount so payable and thereupon such person shall pay the same.

19.?From the above statutory provisions, it can be seen that whenever any duty has been collected in excess of excise duty payable or in any manner as representing duty of excise, such person has to pay the same to the Central Government forthwith. In the present case, the respondent had collected certain amount from the purchasers representing the same as excise duty. Undisputedly, such amount could not have been collected as excise duty. The same, therefore, had to be forthwith paid to the Central Government in terms of Section 11D of the Act. The same not having been done, the Department was within its right to seek recovery thereof.

Therefore, the amount collected from the customers in excess as duty is required to be deposited u/s 11D of CEA,1944 with the department.

7. The next question needs to be considered is whether the demand for the period March 2003 to February 2007 can be enforced when the demand notice was issued on 14.9.2007. In the aforesaid case where the Honble High Court observed that the in absence of time limit prescribed for recovery, a reasonable period, be applied for recovery of the amount. More or less in similar circumstances, where the Honble Gujarat High Court while directing recovery of the amount in Pratibha Syntex Ltd. vs. UOI 2013 (287) ELT 290 (Guj.) observed that judging the period of limitation from the armchair of a reasonable person under no circumstance more than three years period could be considered as a reasonable period for effecting recovery of the amount. Therefore, in my view, recovery

could be effected for three years from the date of issue of show cause notice. Consequently, the matter is remanded to the adjudicating authority for calculation of the demand afresh in the light of the above observation. In the facts and circumstances of the present case, I do not find any justification for imposition of penalty. Accordingly, the penalty imposed on the appellant is set aside. The appeal is disposed of as above.

(Pronounced in the open Court on 25.5.2017)

(Dr. D.M. Misra)

Member (Judicial)

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