

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No.742 of 2008 –SM

(Arising out of Order-in-Original No. 1/2008 dated 21.01.2008/23.01.2008 passed by the Commissioner, Central Excise, Jaipur-I]

M/s. KEC International Ltd.

Jhotwara Industrial Area,
Jaipur.

Appellant

VERSUS

Commissioner of Central Excise,

NCR Building, Statue Circle,
'C' Scheme,
Jaipur.

Respondent

With

Excise Appeal No.2584 of 2010 –SM

(Arising out of order-in-Original No.15/2010 (C.E.) dated 12/14.05.2010 passed by the Commissioner, Central Excise, Jaipur-I]

M/s. KEC International Ltd.

Jhotwara Industrial Area,
Jaipur.

Appellant

VERSUS

Commissioner of Central Excise,

NCR Building, Statue Circle,
'C' Scheme,
Jaipur-I.

Respondent

AND

Excise Appeal No.2585 of 2010 –SM

(Arising out of order-in-Original No.16/2010 (C.E.) dated 12/14.05.2010 passed by the Commissioner, Central Excise, Jaipur-I]

M/s. KEC International Ltd.

Jhotwara Industrial Area,
Jaipur.

Appellant

VERSUS

Commissioner of Central Excise,

NCR Building, Statue Circle,
'C' Scheme,
Jaipur-I.

Respondent

APPEARANCE:

Shri Alok Kothari, Advocate for the appellant

Shri Pradeep Gupta, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER Nos.50246-50248/2022

DATE OF HEARING: 23.09.2021
DATE OF DECISION: 15.03.2022

ANIL CHOUDHARY:

The issue in these appeals is regarding the adjustment of interest (out of refund arising subsequently), which is claimed to be time barred.

2. The brief facts are that the appellants are registered with the Central Excise Department and engaged in the manufacture of galvanised towers and structures, which are dutiable. The appellants supplied their goods, which are subject to Price Escalation Clause, as per purchase agreement and deposited the differential excise duty, if any, upon finalisation of the price between parties. The issue is the same in all the three appeals and the details are as under:-

S.No	Appeal No.	SCN dated	Interest under Section 11AB	PV duty paid between
1.	E/742/2008-EX(SM)	30.08.2007	Rs.5,75,185/-	April, 2005 to March, 2006
2.	E/2584/2010-EX(SM)	03.03.2009	Rs.17,13,190/-	April, 2007 to Jan.2008
3.	E/2585/2010-EX(SM)	22.05.2008	Rs.15,61,196/-	Dec.,2006

3. During the course of audit, it was observed that the appellant had issued supplementary invoices on the price variation finalisation, in respect of the clearances made in the previous months. Thereafter, the appellant had paid the differential excise duty including cess against the price variation bills regularised for the goods cleared in the past on payment of duty. The Revenue issued show cause notices, as mentioned in the aforementioned

tables. As the appellants had not paid the amount of interest for the period from the date of original invoice till the date of payment of differential duty, upon raising of the price variation bills/ supplementary invoices, show cause notice was issued demanding amount of interest under Section 11 AB read with Section 11 A(2B) of the Act and further penalty was also proposed.

4. Show cause notice was adjudicated on contest by the Id. Commissioner, who confirmed the proposed demand of interest and also penalty of Rs.5,000/- under Rule 27 of the Central Excise Rules, 2002.

5. Being aggrieved, the appellant is before this Tribunal.

6. Ld. Counsel for the appellant urges that the issue of chargeability of interest for the period from the date of original invoice when the goods were cleared till the date of supplementary invoice or price variation invoice, and payment of differential duty, has been settled by the Hon'ble Supreme Court in favour of Revenue in the matter of **Steel Authority of India Limited – 2019 (326) ELT 450 (S.C.) vide judgement dated 8.5.2019**

7. Ld. Counsel further urges that they are challenging the levy of interest on the ground of limitation, urging that for want of condition precedent, the extended period of limitation is not available to Revenue. Admittedly, in the facts of the present case, the transaction is duly recorded in the books of accounts maintained in the ordinary course of business and proper vouchers have been maintained. Further, the appellant have been filing regular returns and paying the admitted taxes. Thus, the invocation of extended period of limitation is bad as there is no element of fraud, mis-statement or contumacious conduct on the part of the appellant.

8. The appellant further relies on the ruling of the Hon'ble Delhi High Court in the case of **Hindustan Insecticides Ltd. – 2013 (297) ELT 332**, wherein the similar issue of payment of differential duty, subsequent to price

revision was involved, and whether the interest was payable for the retrospective period from the date of original invoice, under the fact that the appellant have *suo moto* paid the differential duty upon raising of the supplementary invoice. The Hon'ble High Court framed the following question of laws –

“Whether the Tribunal fell into error in holding that for recovery of interest on account of retrospective revision of the prices, the extended period of limitation under Section 11 A could be invoked vis-à-vis interest especially in view of the decision of the Hon'ble Supreme Court in **Commissioner Vs. T.V.S. Whirlpool Ltd. -2010 (119) ELT A-177 (SC)**. The Hon'ble High Court observed that failure to pay interest under Section 11 AB is also treated as short payment of duty. The Hon'ble High Court further took notice that the show cause notice for payment of interest was issued after 4 years and it was beyond a reasonable period and the Department could recover the amount from the assessing officer, who had not taken the steps for 4 years and not from the assessee. The findings of the Hon'ble Supreme Court in the case of **Commissioner of Trade Tax, Lucknow Vs. Kanhai Ram Thekedar - 2005 (185) ELT 3 (SC)** was that where no limitation period was prescribed, therefore, proceedings of recovery could be initiated within a reasonable time as the demand of interest is under the provisions of Section 11 A, therefore, the limitation prescribed therein would equally apply. Accordingly, the Hon'ble Supreme Court held that extended period of limitation is not invocable and accordingly, set aside the demand of interest.

9. Opposing the appeal, Id. Departmental Representative relies on the impugned order and further relies on the following rulings:-

- (1) **Steel Authority of India Ltd. -2019(366) ELT 769 (SC)**
- (2) **Gammon India Ltd. 2013 (298) ELT 171 (Bombay)**
- (3) **Hindustan Insecticides Ltd.**

2012 (286) ELT 208 (Tribunal-Delhi)

10. Having considered the rival contentions, following the ruling of Delhi High Court in the case of **Hindustan Insecticides Ltd. (supra)**, which is based on the ruling of the Apex Court in the case of **Commissioner Vs. T.V.S. Whirlpool Ltd. (supra)**, I hold that the benefit of extended period of limitation is not available to Revenue in the present matters, there being no element of fraud, mis-statement or contumacious conduct on the part of the appellant. Thus, the demand of interest is hit by limitation. Accordingly, these appeals are allowed and the impugned orders are set aside.

(Pronounced on 15.03.2022).

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

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**(ANIL CHOUDHARY)
MEMBER (JUDICIAL)**

