

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 1572 OF 2012

[Arising out of Order-in-Appeal No: P-I/MMD/151/2012 dated 31st July 2012
passed by the Commissioner of Central Excise (Appeals), Pune – I.]

Cadbury India Ltd

Village Induri, Talegaon, Dabhade, Tal: Maval
Pune – 410 507

... Appellant

versus

Commissioner of Central Excise

Pune – I

ICE House, 41-A Sassoon Road, Pune - 411001

...Respondent

APPEARANCE:

Shri Arihand Tater, Advocate for the appellant

Shri Xavier R Mascarenhas, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 87204/2023

DATE OF HEARING:

05/07/2023

DATE OF DECISION:

06/12/2023

PER: C J MATHEW

The issue in this appeal of M/s Cadbury India Ltd, against

order¹ of Commissioner of Central Excise (Appeals), Pune – I, is the chargeability of interest in terms of rule 7 of Central Excise Rules, 2002 following confirmation of demand of ₹ 36,07,51,390/- on finalization of provisional assessment and most of which had been discharged, except for ₹ 4,79,41,410/- which was paid *vide* challan dated 27th March 2012, during the pendency of adjudication. Of the interest confirmed by the adjudicating authority, the first appellate authority had set aside ₹ 2,09,50,522/- by relying upon the decision of a Larger Bench of the Tribunal in *Bimetal Bearings Ltd v. Commissioner of Central Excise, Chennai* [2008 (232) ELT 790 (Tri.-LB)] and all that now remains is the interest payable on the amount that had not been discharged till the completion of adjudication.

2. Learned Counsel for the appellant placed reliance on circular no. 354/66/2001-TRU dated 21st June 2021 of Central Board of Indirect Taxes & Customs (CBIC) wherein it has been clarified that

‘3.

(iii) *In Rule 7 relating to provisional assessment, provision has also been made for charging of interest or for allowing refund, as the case may be. It may be clarified that these will apply to cases in which provisional assessment is resorted to on or after 1-7-2001 and not to past cases of provisional assessment even if the assessments are finalized on or after 1-7-2001.’*

¹ [order-in-appeal no. P-I/MMD/151/2012 dated 31st July 2012]

3. Furthermore, reliance was placed on the decision of Hon'ble High Court of Bombay in *DGP Hinoday Industries Ltd v. Commissioner of Central Excise, Pune-I* [2012 (3) TMI 327 – BOMBAY HIGH COURT] holding that

'23) If on investigation, the Tribunal arrives at a conclusion that the clearances during the relevant period were under Rule 9B, then the demand claiming interest under Section 11AA cannot be sustained, because, the assessment made on 8/10/1993 would in fact be finalisation of provisional assessment under Rule 9B and not under Section 11A (as erroneously recorded in the order) and in such a case, the interest liability under Section 11AA would not be applicable. As noted earlier, interest liability under rule 7(4) of the 2001 Rules would arise only if the provisional assessments were made after 1/7/2001 and in the present case, the provisional assessment, if any, being prior to 1/7/2001, the interest liability would not apply. If it is found that the clearances were not made under Rule 9B and the averments as well as the documents to that effect produced by the assessee are found to be false or fabricated, then, the Tribunal shall initiate appropriate proceedings against the assessee.'

4. Learned Authorised Representative placed reliance on the decision of the Hon'ble High Court of Gujarat in *Gujarat Narmada Valley Fertilizers Company Ltd v. Union of India* [2016-TIOL-2393-HC-AHM-CX].

5. It would appear that the appellant had cleared intermediate goods during 1992-96, provisionally under rule 9B of Central Excise Rules, 1944, owing to dispute in valuation which came to be decided

ultimately by the Hon'ble Supreme Court holding that cost of production was to be defined for the purpose in accordance with CAS-4 guidelines. The assessments were thereby finalized on 30th December 2011 and appellant required to pay differential duty for the period amounting to ₹ 4,79,41,410/- as recorded *supra* and, except for the portion on which disputed interest continues to subsist, the consequential dues had been discharged by them. Though the assessments were rendered as provisional under rule 9B of Central Excise Rules, 1944, the finalization occurred after Central Excise Rules, 2002 came into effect.

6. We find that the issue pertaining to leviability of interest on finalization of provisional assessment, in all cases pertaining to clearances prior to 2001, has been set at rest by the Central Board of Indirect Taxes & Customs (CBIC) in circular *supra*. Furthermore, in another dispute of theirs decided by the Tribunal, in *Cadbury India Ltd v. Commissioner of Central Excise, Pune – I* [2009 (246) ELT 342 (Tri.-Mumbai)], it was held that

'5. These provisions are totally analogous to the provisions of Rule 7(4) of the Central Excise Rules, 2002 and, therefore, interest will be payable from 1-7-2001 from which date these rules became effective. As regards revenue's plea that interest will be chargeable for the entire period because power to charge interest existed under Sec. 37, I do not find any merit in the same as Sec. 37 was only an enabling power to charge interest and once the power is not exercised the interest cannot be charged.

Similarly there is nothing in the Larger Bench CESTAT decision in the case of Bimetal (supra) relating to provisions of Rule 9(b) as the same also deals with the provisions of Rule 7(4) of the Central Excise Rules, 2002. Interest cannot, therefore, be charged prior to July 2001. In view of above, the Commissioner (Appeals) order upholding that the interest is chargeable for the entire period from 1-1-2000 to 31-12-2003 is partially set aside by holding that interest will be chargeable for the period 1-7-2001 to 31-12-2003 and not for the period prior to 1-7-2001. The appeal is disposed off accordingly.'

7. The Hon'ble High Court of Bombay, in *re DGP Hinoday Industries Ltd*, has clearly held that interest liability would arise only when the assessments were made provisional after the new rules came into existence.

8. In view of the clarification issued by the Central Board of Indirect Taxes & Customs (CBIC) as well as judicial determination in their own case, we find that the impugned order does not sustain and is accordingly set aside.

(Order pronounced in the open court on 06/12/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)