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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/3883/2010 – SM[BR] E / STAY / 3708/2010-SM[BR] **Date 19/09/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S PREM CABLES (P) LTD
PIPALIAKALAN, PALI(RAJ)

M/S PREM CABLES (P) LTD Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 611/2011-SM[BR] &S/530/2011 dated 2.9.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.K K ANAND, ADVOCATE
A-103, DEFENCE COLONY, NEW DELHI-110024

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision 02.09.2011

Excise Stay Application No. 3708/2010-SM with
Excise Appeal No. 3883 of 2010-SM

[Arising out of order in original No. 32/2010(CE)/JPR-II/Comm. dated 30.08.2010 passed by the Commissioner, Central Excise, Jaipur-II]

M/s Prem Cables (P) Limited — Appellants

Vs.

CCE, Jaipur — Respondent

Appearance:

Rep. by Sh. Saurav Yadava, Advocate for the appellants.
Rep. by Sh. B.L. Soni, DR for the respondent.

Coram: Hon'ble Sh. D.N. Panda, Judicial Member

Final ORDER NO. 611/2011 SM (BR) &
S-530/2011 SM (BR)

Per: Shri D. N. Panda:

Learned Counsel moving the stay application submits that there is limitation prescribed for recovery of interest relating to the years 2005-06 to 2008-09. Duty liability arose under supplementary invoices value and that was paid as per law. Interest of Rs. 9,69,860/- demanded thereon is time barred. Therefore, not only stay application may be allowed but also the appeal shall succeed. To submits so, he says that Apex Court has prescribed limitation in terms of para 13 of the judgement in the case of Collector of Central Excise, Jaipur vs. Raghuvar (India) Ltd. reported in 2000 (118) ELT 311 (S.C.). So also he relies on the decision of Tribunal in KEC International Ltd. vs. CCE, Jaipur reported in 2010 (262) ELT 588 (Tri. Del.). According to him when the show cause notice was issued on 07.01.2010 for the years 2005-06, 2006-07, 2007-08 and 2008-09, there shall be no recovery of interest on the supplementary invoices.

2. On the other hand, ld. DR relies on the decision of the Apex Court in the case of CCE, Pune vs. SKF India Ltd. -2009 (239) ELT 385 (S.C.) and CCE vs. International Auto Ltd. -2010 (250) ELT 3 (SC) and submits that not only the stay application may be dismissed, the appeal may also be dismissed.

3. Heard both sides and perused record.

4. Both parties having consented to dispose the appeal itself by their extensive arguments aforesaid and the appeal being on a very limited issue of leviability of interest on the assessable value appearing in supplementary invoices, both stay application and appeal are disposed of by this common order. Section 11A of the Central Excise Act, 1944 (hereinafter referred to as "the Act") encompasses the circumstances mentioned in sub-section (1) of Section 11A for levy of duty and levy is subject to limitation of one year prescribed therein. The limitation is extended to a further period of five years in case fraud, or suppression of facts or collusion, willful mis-statement contravention of provisions of Central Excise Act, 1944 or rules made thereunder. Once the short levy or short payment is one of the circumstance, balance levy or non payment become realizable. Supplementary invoices give rise to duty liability followed by interest. The appellant has no dispute on duty liability. But grievance of appellant is that interest on the duty so paid is not recoverable being time barred. For recovery of interest there is no time limit prescribed by Section 11A. Apex

Court in the case of CCE, Jaipur vs. Ragbhuvar (India) Ltd. 2000 (118) ELT 311 (SC) held that:-

> **13.** Any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of period so stipulated has the consequence of creation and destruction of rights and, therefore, must be specifically enacted and prescribed therefor. It is not for the Courts to import any specific period of limitation by implication, where there is really none, though Courts may always hold when any such exercise of power had the effect of disturbing rights of a citizen that it should be exercised within a reasonable period. Section 11A is not an omnibus provision which provides any period of limitation for all or any and every kind of action to be taken under the Act or the Rules but will be attracted only to cases where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded. The section also provides for an extended period on certain contingencies and situations. The situation on hand and the one which has to be dealt with under Rule 57-I, as it stood unamended, does not fall under any one of those contingencies provided for in Section 11A of the Act. Part AA of the Rules in which Rule 57-I is found included provides a special scheme for earning credit and adjustment of duty paid on excisable goods used as inputs in the manufacture of what is referred to as 'final product', and thereby enable the manufacturer to utilize the credit so allowed towards payment of duty of excise leviable on the final products, in the manner and subject to the terms and conditions stipulated therein. The manufacturer, in this case while removing the final product manufactured has adjusted against payment of excise duty on such final product a part or portion of the credit earned by him under the special scheme and what is sought to be really and in substance done is to inform the manufacturer that the adjustment he purported to have made was with an amount not legitimately or factually earned by or due to him. For this purpose, the irregularity and impropriety committed by the manufacturer in maintaining the accounts and the error in the calculation of the credit said to have been earned by him is pointed out, and the manufacturer is only directed to reverse the credit so wrongly and undeservedly made by readjustment and if need be, to recover the amount equivalent to such credit wrongly availed of and disallowed by the proper officer. The recovery of credit availed of and utilized in utter breach of the faith and mutual trust and confidence which is the *raison d'etre* for the proper and successful working of the Modvat scheme and that too in gross violation of the mandatory requirements necessarily to be fulfilled before ever claiming or availing of such benefits cannot be said to be the same as the demand for payment to be made under Section 11A of the Act of any excise duty not levied or paid or has been short-levied or short-paid. They fall into two distinct and different categories altogether with basic as well as substantial differences to distinguish them from each other. As

a matter of fact, Rule 57-I envisages disallowance of the credit and consequential adjustment in the credit account or the amount-current maintained by the manufacturer and if only any such adjustments are not possible proceed to recover the amount equivalent to the credit illegally availed of. Consequently, the situation postulated to be dealt with under Rule 57-I cannot be said to involve a case of manufacture and removal of excisable goods without subjecting such goods to levy or payment of the various nature and category enumerated in Section 11A of the Act on its own terms will have no application or operation to cases covered under Rule 57-I of the Rules.

5. Section 11AB takes care of realization interest in the circumstances where there was non-payment of the levy or short levy. This section does not prescribe any limitation. The levy determined either under sub-section (2) of Section 11A or sub-section (2A) of the said Section which is not disputed by appellant calls for recovery of interest. The short levy itself or short payment itself stand to prove that the assessee has defaulted in making the payment. It may also to be appreciated that while prescribing recovery of interest legislature has thoughtfully not prescribed the limitation for such recovery since interest is outcome of the levy. If levy is barred by limitation interest automatically ceases to be recovered. When levy is not time barred, interest follows. Therefore, Section 11AB not being subject to sub-section (1) of Section 11A, appellant's preposition that levy of interest is time barrd is inconceivable. There is also no time limit prescribed either in sub-section (2) or sub-section 2B of the section 11A of the Act. Once there is duty paid on supplementary invoices, the appellant is legally bound for interest which is an automatic consequence. Limitation is not prescribed under sub-section (1) of Section 11A of Central Excise Act, 1944 in respect of levy of interest while that section has its own independent existence for realization of duty.

Interest is a consequence of section 11A or 11AB of the Act as the case may be.

6. While delivering the judgement in SKF India Ltd. case (supra), Hon'ble Apex Court has held that if the object of the law is to state clearly and unambiguously the obligations of the person whom the law addresses and to spell out plainly and without any confusion the consequences of failure to discharge the obligations cast by the law then the four sections of the Act fall miles short of the desired objective. Once there is no ambiguity in respect of levy of duty under Section 11A, there is further scope to argue that interest is not payable on the plea of limitation while levy of duty is not disputed but paid. The levy of interest on supplementary invoices is also reiterated by Apex Court in the case of International Auto Ltd. (supra)).

7. Learned Counsel relied on the decision of Reghuvar (India) Ltd. (supra). It was not brought to notice of Hon'ble court that no limitation was prescribed by section 11AB of the Act. Interest being consequence of levy and no limitation being prescribed by Section 11AB of Central Excise Act, 1944, the appellant may not be able to get benefit of that decision. Learned Counsel also relied on the said decision of the Tribunal to submit that when the Division Bench had remanded the matter, a Single Bench should also pass same order otherwise that will amount to judicial indiscipline. It may be stated that learned Counsel has misconceived the contents of para 4 of the decision of the Tribunal in the case of KEC International Ltd. (supra). Tribunal has categorically stated that the point of limitation is never a pure question of law. It is always a mixed question of law and facts. But the

present case demonstrated by page 28 of the appeal folder as relied by the learned Counsel, categorically demonstrates the periodicity of default that was well known to appellant and the appellant willfully defaulted to make payment of interest. Show cause notice issued on 30.12.2009 was to recover the same. Once the reliance is placed on the document for defence that can be used by revenue to protect its interest. Learned Adjudicating Authority having noted that demand of duty being paid for the default period, interest became payable for no time bar proceeding. There was nothing ambiguity. Facts of present case was clear. Therefore, there is no need to remand the matter. Accordingly, the appeal is dismissed. Since the appeal has no merit to succeed, interim relief cannot be granted as prayed for. Stay application is accordingly disposed.

[D.N. Panda]
Judicial Member

Pant