

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Date **06/07/2011**

Appeal No. E/548/2010 & E/549/2010 - EX[DB] WITH
E/S/563/2010, E/S/S/564/2010-EX

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

To :
M/S SKH AUTO COMPONENTS LTD
PLOT NO 77, SECTOR 25, FARIDABAD.
M/S SKH AUTO COMPONENTS LTD

Appellant

Vs

Respondent

C.C.E. DELHI IV

STAY ORDER NO.695/2011-EX

STAY ORDER NO.696/2011-EX

I am directed to transmit herewith a certified copy of Final order No.552&553 2011 EX[DB] dated 23-6-11
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

b h
Assistant Registrar

(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association. CESTAT, New Delhi
5. Director Publications. Customs. Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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 - 110005
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
14. HON'BLE PRESIDENT.

b l
Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 23.06.2011

Excise Stay No. 563 of 2010 in Excise Appeal No. 548 of 2010

M/s SKH Auto Components Ltd.

Appellants

Vs.

CCE, Delhi-IV

Respondent

Appearance:

Rep. by Sh. B.L. Narasimhan & Sh. Hemant Bajaj, Advocates for the appellants.

Rep. by Sh. I. Baig, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Mathew John, Member (Technical)

STAY ORAL ORDER NO. 695/2011-EX

Per: Shri Justice R.M.S. Khandeparkar:

Heard the learned Advocate for the appellants and the DR for the respondent.

2. Since we propose to dispose of the appeal itself, the application is allowed without insisting for any further deposit with direction to the registry to place the appeal itself for final hearing forthwith.

3. Applications stand disposed of accordingly.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Member (Technical)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 23.06.2011

Excise Stay No. 564 of 2010 in Excise Appeal No. 549 of 2010

M/s SKH Auto Components Ltd.

Appellants

Vs.

CCE, Delhi-IV

Respondent

Appearance:

Rep. by Sh. B.L. Narasimhan & Sh. Hemant Bajaj, Advocates for the appellants.

Rep. by Sh. I. Baig, DR & Sh. B.K. Singh, Joint CDR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Mathew John, Member (Technical)

STAY ORAL ORDER NO. 696/2011-EX

Per: Shri Justice R.M.S. Khandeparkar:

Heard the learned Advocate for the appellants and the DR for the respondent.

2. Since we propose to dispose of the appeal itself, the application is allowed without insisting for any further deposit with direction to the registry to place the appeal itself for final hearing forthwith.

3. Applications stand disposed of accordingly.

(Justice R.M.S. Khandeparkar)
President

(Mathew John)
Member (Technical)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 23.06.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	See
4	Whether Order is to be circulated to the Departmental authorities?	✓

Excise Appeal No. 548 of 2010

[Arising out of order in original 53/NS/Adjn/09 dated 15.12.2009 passed by the Commissioner of Central Excise, Delhi-IV, Faridabad]

M/s SKH Auto Components Ltd.

Appellants

Vs.

CCE, Delhi-IV

Respondent

Appearance:

Rep. by Sh. B.L. Narasimhan & Sh. Hemant Bajaj, Advocates for the appellants.

Rep. by Sh. I. Baig, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Mathew John, Member (Technical)

Per: Shri Justice R.M.S. Khandeparkar:

This appeal is heard in terms of order passed today in Excise Stay application No. 563 of 2010.

2. Heard the learned Advocate for the appellants and the DR for the respondent.

3. The present appeal arises from order dated 15.12.2009 passed by the Commissioner, Faridabad. By the impugned order, demand for interest to the tune of Rs. 32,41,620/- has been confirmed.

4. Though the impugned order was sought to be challenged on various grounds, the ld. Advocate having noted the decision in the case of **Commissioner of Central Excise, Pune vs. SKF India Ltd.** reported in 2009 (239) ELT 385 (SC), has fairly submitted in view of the said decision the grounds sought to be alleged are no more available to the appellants. Considering the same, and as the issue in the matter relates to the interest amount received by the appellants by issuance of the supplementary invoices, the same issue being fully covered by the decision of the Apex Court in SKH India Ltd. (supra) the challenge to the impugned order does not survive and hence appeal fails and is hereby dismissed.

(Justice R.M.S. Khandeparkar)
President

(~~Mathew~~ John)
Member (Technical)

Pant

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 23.06.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	See
4	Whether Order is to be circulated to the Departmental authorities?	Yes.

Excise Appeal No. 549 of 2010

[Arising out of order in original 52/NS/Adjn/09 dated 15.12.2009 passed by the Commissioner of Central Excise, Delhi-IV, Faridabad]

M/s SKH Auto Components Ltd.

Appellants

Vs.

CCE, Delhi-IV

Respondent

Appearance:

Rep. by Sh. B.L. Narasimhan & Sh. Hemant Bajaj, Advocates for the appellants.

Rep. by Sh. I. Baig, DR & Sh. B.K. Singh, Joint CDR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Mathew John, Member (Technical)

FINAL ORAL ORDER NO. 553/2011-EX

Per: Shri Justice R.M.S. Khandeparkar:

This appeal is heard in terms of order passed today in Excise Stay application No. 564 of 2010.

2. Heard the learned Advocate for the appellants and DR as well as Joint CDR for the respondent.

3. The present appeal arises from order dated 15.12.2009 passed by the Commissioner, Faridabad. By the impugned order, the demand for interest to the tune of Rs. 6,40,218/- has been confirmed against the appellants.

4. While fairly conceding that on merits, the case is covered by the decision in **Commissioner of Central Excise, Pune vs. SKF India Ltd.** reported in 2009 (239) ELT 385 (SC), ld. Advocate drawing our attention to the impugned order submitted that the demand in relation to the interest relates to the month of June 2007 while the show cause notice was issued only on 05.08.2009. Applying the principles behind Section 11A of the Central Excise Act, 1944, the ld. Advocate submitted that the normal period prescribed thereunder for initiating any action for recovery of duty if held to be applicable to such cases also, then the notice ought to have been issued within one year from June 2007 and having not done so, the claim was clearly barred by limitation. There was no allegation of suppression of facts nor was there any justification for invoking extended period of limitation. Reliance is placed in the decision of the Tribunal in the matter of CC,

(Tribunal), while contending that the same was confirmed by the Apex Court in the matter of **Commissioner vs. T.V.S. Whirlpool Ltd.** -2000 (119) ELT A177 (SC). On the other hand, the Jt. CDR submitted that for the recovery of interest, no limitation is prescribed and, therefore, applying the law laid down by the Apex Court in **CCE, Jaipur vs. Raghuvar (India) Ltd.** reported in 2000 (118) ELT 311 (SC), the decision of the Tribunal in T.V.S. Whirlpool would not be applicable and then demand cannot be said to be barred by limitation. The DR drawing our attention to the decision of Hon'ble Bombay High Court in **CCE&C, Aurangabad vs. Padamashri V.V. Patil S.S.K. Ltd.** reported in 2007 (215) ELT 23 (Bom.) has held that in case for demand of interest, no limitation period is applicable and, therefore, merely because notice was given after a period of one year from June 2007, it cannot be said to be barred by limitation.

5. There is no dispute that the demand for interest relates to the month of June 2007. Undisputedly, the show cause notice was issued on 05.08.2009 and it did not invoke extended period of limitation as such. In the background of these undisputed facts, taking into consideration the reported decisions relied upon, the matter will have to be decided.

6. In **SKF India** case, the Apex Court while dealing with the issue regarding the liability to pay interest pursuant to issuance of supplementary invoices, held thus:-

“7. 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

amendments from time to time those provisions have now become so complicated that in order to discern their meaning it becomes necessary to read them back and forth several times. We see no reason why the two periods for which interest is leviable may not be put together and dealt with in one consolidated provision instead of being split up in Sections 11AA and 11AB. Also, there is much scope to reorganise all the different subsections of Section 11A and to present the scheme of that section in a more coherent and readable form.

8. Be that as it may. In the case in hand we have to deal with the law as it stands now.

9. Section 11A puts the cases of non-levy or short levy, non-payment or short payment or erroneous refund of duty in two categories. One in which the non-payment or short payment etc. of duty is for a reason other than deceit; the default is due to oversight or some mistake and it is not intentional. The second in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty"; that is to say, it is intentional, deliberate and/or by deceitful means. Naturally, the cases falling in the two groups lead to different consequences and are dealt with differently. Section 11A, however allow the assessee in default in both kinds of cases to make amends, subject of course to certain terms and conditions. The cases where the non-payment or short payment etc. of duty is by reason of fraud collusion etc. are dealt with under sub-section (1A) of Section 11A and the cases where the non-payment or short-payment of duty is not intentional under sub-section (2B).

10. Sub-section (2B) of Section 11A provides that the assessee in default may, before the notice issued under sub-section (1) is served on him, make payment of the unpaid duty on the basis of his own ascertainment or as ascertained by a Central Excise Officer and inform the Central Excise Officer in writing about the payment made by him and in that event he would not be given the demand notice under sub-section (1). But Explanation 2 to the sub-section makes it expressly clear that such payment would not be exempt from interest chargeable under Section 11AB, that is, for the period from the first date of the month succeeding the month in which the duty ought to have been paid till the date of payment, of the duty. What is stated in Explanation 2 to sub-section (2B) is reiterated in Section 11AB that states where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person who has paid the duty under sub-section (2B) of Section 11A, shall, in addition to the duty, be liable to pay interestIt is thus to be seen that unlike penalty that, is attracted to the category of cases in which the non-payment or short

'mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty', under the scheme of the four Sections (11A, 11AA, 11AB & 11AC) interest is leviable on delayed or deferred payment of duty for whatever reasons.

11. The payment of differential duty by the assessee at the time of issuance of supplementary invoices to the customers demanding the balance of the revised prices clearly falls under the provision of sub-section (2B) of Section 11A of the Act".

7. The Apex Court in Raghuvar (India) case had observed that 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 therefore. It is not for 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 of the Central Excise Act, 1944 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 attract 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. Having so observed, the Apex Court recorded that the situation in the case before the Apex Court in Raghuvar (India) case which was required to be dealt with under Rule 57-I as it stood unamended at the relevant time and, therefore, did not fall under any one of those contingencies provided for in Section

with a totally different set of facts and circumstances and in that context the observations were made. The point which is sought to be raised in the case in hand is that assuming but without admitting that the principle behind Section 11A as far as the period of limitation is applicable for recovery of interest, even then the action taken was not beyond the period of limitation prescribed thereunder. In these backgrounds, the said decision would not be of much help to the respondent.

8. The DR has placed reliance in the decision of the Bombay High Court in the case of **CCE&C, Aurangabad vs. Padmsashri V.V. Patil S.S.K. Ltd.** reported in 2007 (215) ELT 23 (Bom.). The Bombay High Court therefore while dealing with the issues as to whether there is any discretion with the authorities to exempt penalty under Section 11AC and interest under Section 11AB of the Central Excise Act, 1944 while confirming the demand for evasion of excise duty and whether such exemption can be justified merely because the evaded excise duty was paid before the issuance of the show cause notice, held that:-

10. So far as interest u/s. 11AB is concerned, on reference to text of Section 11AB, it is evident that there is no discretion regarding the rate of interest. Language of Section 11AB(1) is clear. The interest has to be at the rate not below 10% and not exceeding 36% p.a. The actual rate of interest applicable from time to time by fluctuations between 10% to 36% is as determined by the Central Government by notification in the Official Gazette from time to time. There would be discretion, if at all the same is incorporated in such notification in the gazette by which rates of interest chargeable u/s. 11AB are declared.

The second aspect would be whether there is any discretion not to charge the interest u/s. 11AB at all and we are afraid, language of Section 11AB is unambiguous. The person, who is liable to pay duty short levied/short paid/non-levied/unpaid etc., is liable to pay interest at the rate as may be determined by the Central Government from time to

Section 11, which runs thus :

“Where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person, who is liable to pay duty as determined under sub-section (2) or has paid the duty under sub-section (2B) of Section 11A, shall in addition to the duty be liable to pay interest at such rate

The terminal part in the quotation above, which is couched with the words “shall” and “be liable” clearly indicates that there is no option. As discussed earlier, this is a civil liability of the assessee, who has retained the amount of public exchequer with himself and which ought to have gone in the pockets of the Central Government much earlier. Upon reading Section 11AB together with Sections 11A and 11AA, we are of firm view that interest on the duty evaded is payable and the same is compulsory and even though the evasion of duty is not *mala fide* or intentional.

11. The question then arises whether payment of duty before issuance of show cause notice exempts the assessee from liability to pay interest u/s. 11AB. Learned Counsel Shri Kolte had placed reliance upon concluding para in the judgment of CESTAT Bangalore in the matter of *Rashtriya Ispat Nigam Ltd. v. Commissioner of Central Excise, Visakhapatnam*, which reads thus :

“In these circumstances, there is no justification on the part of the department to impose penalty u/s. 11AC as well as under Rule 173Q of the Central Excise Rules, 1944. Consequentially, no interest also is payable.”

In the matter, penalty u/s. 11AC is held non-imposable because the amount of duty was paid before issuance of show cause notice. The observation “consequentially no interest is also payable”, according to Advocate Shri Kolte, was confirmed by the Hon’ble the Supreme Court while dismissing the appeal of the department. First of all, with due respect, it must be said that on going through the entire judgment of the Tribunal at Bangalore, there does not appear any submissions advanced regarding the issue of interest. The stray reference to interest has come in the judgment of the Tribunal unsupported by any reasons except that it has treated the interest chargeable u/s. 11AB at par with the penalty imposable u/s. 11AC. We have sufficiently distinguished the nature of liability of interest u/s. 11AB and penalty u/s. 11AC in the discussion hereinabove. The first one is civil liability whereas second is penal, if not criminal, liability. This is because u/s. 11AC, existence of *mens rea* is a must, whereas u/s. 11AB, it may be innocent evasion or omission to pay the duty. The judgment of the Supreme Court is brief and it is

have already pointed out that this is a judgment, which can safely be presumed to be regarding the duty payable for a period prior to insertion of amendments by Act No. 14/2001 with effect from 11-5-2001, which have clarified the distinction between Sections 11AB and 11AC by virtue of sub-section (2B) and Explanations below the same. Second explanation below sub-section (2B) reads thus :

“Explanation (2) : For the removal of doubts, it is hereby declared that the interest u/s. 11AB shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of duty if any as may be determined by the Central Excise Officer, but for this sub-section.”

It is evident that explanation has taken care to charge the interest on the difference amount if the amount of duty payable as ascertained by the assessee and the amount of duty payable as ascertained by the Central Excise Officer, is different. Thus, even if the assessee pays the short duty by virtue of liberty granted by sub-section (2B) of Section 11A, he is liable to pay interest, on the same even if the amount is paid, and he is liable to further interest also on the amount of short duty as ascertained by the department if that exceeds the self-assessment and to that extent. By this explanation, we are convinced that even if no notice is issued by the department because it agrees with the amount of short duty paid by the assessee as ascertained by the assessee himself under sub-section (2B), still the assessee shall be liable to pay interest over the same even without going through the process of determination as contemplated by Section 11A(1) and (2) commencing with a show cause notice and culminating with an order of the Central Excise Officer. The show cause notice and determination can go on if the short duty is not paid, but even if short duty is paid by taking liberty under sub-section (2B), we are afraid, that does not absolve the assessee from the liability to pay interest thereon. In case by proceeding with the show cause notice, if the Central Excise Officer determines short duty payable higher than as ascertained and paid by the assessee himself, the assessee would be liable to pay interest u/s. 11AB upon the same.

Emphasis by Advocate Shri Kolte was on the tail piece of sub-section (2B). According to him, once the short duty is paid before issuance of show cause notice, the department is prohibited from issuing show cause notice and, therefore, there cannot be any adjudication u/s. 11A(1) and (2) and, therefore, there cannot be any imposition of either interest u/s. 11AB or penalty u/s. 11AC. We quote the tail piece, relied upon by Advocate Shri Kolte :

“.....On receipt of such information (regarding payment under sub-section (2B) shall not serve any notice under sub-section (1) in respect of duty so paid.”

We are afraid, the proceedings starting with the show cause notice u/s. 11A(1) are prohibited so far as duty paid. It does not make any reference, much less prohibits issuance of show cause notice for the purpose of according an opportunity to the assessee to show cause as to why interest may not be charged or penalty may not be imposed. The department would be justified in issuing show cause notice pertaining to duty as well if the duty as ascertained by the assessee himself and paid is less than duty as *prima facie* ascertained by the officer of Central Excise. In any case, we are unable to agree with the submission by learned Counsel Shri Kolte that on payment of short duty as under sub-section (2B), before issuance of show cause notice, no interest u/s. 11AB can be charged, by virtue of portion of Section 11AB (2B) reproduced hereinabove". (Emphasis supplied)

9. The Tribunal in **T.V.S. Whirlpool** case, while dealing with the issue where a demand of interest in terms of Section 47 read with Section 61(3) of the Customs Act, 1962 was barred by limitation, held thus:-

5. This Tribunal in the context of the demands Rule 57-I of the Central Excises and Salt Act, 1944 when no period of limitation was prescribed under the said rule has held that taking into consideration the scheme of the Central Excise Law and the limitation periods prescribed for various purposes under different sections and rules reasonable period limitation would be six months or five years depending upon whether there has been any suppression of facts etc. with the fraudulent intention or not. We observe as pointed out before us that the scheme of the Central Excises and Salt Act so far as the recovery of duty etc. is concerned is similar to that under the Customs Act, 1962. Here also we observe under Section 28 of Customs Act, 1962 period of limitation prescribed for recovery of duty is six months or five years as above and also the period for claim of refund is also six months. The position being similar we hold that the same logic should apply in respect of the recovery to be made under the Customs Act where no period of limitation has been prescribed. We therefore hold that the Ld. Lower Authority is right in holding that the demand for interest beyond the period of six months from clearance of goods is barred by limitation and we therefore uphold the order of the lower authority and dismiss the appeals. We observe that the relevant date for demand of duty would be date on which goods were allowed clearance from the Warehouse as the interest is required to be paid till the date of clearance in terms of Rule 61(3) of the Customs Act, 1962. The department recovered at the time of clearance the duty as well as interest as held payable at that time and cancelled the bonds. Taking into consideration the relevant date the demand have been clearly

10. Being dissatisfied, the department had carried the matter in appeal before the Apex Court in TVS case. However, the appeal was dismissed with the following observations:-

“It is only reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the claim for interest thereon. We find no merit in the appeals and they are dismissed with costs”.

11. As already observed above in **Padmashri V.V. Patil S.S.K.** case, the Bombay High Court while dealing with the issue of interest payable in terms of Section 11AB of the said Act has clearly held that even if the assessee pays the short duty by virtue of liberty granted by sub-section (2B) of Section 11A, he is liable to pay interest, on the same even if the amount is paid, and he is liable for further interest also on the amount of short duty as ascertained by the department if that exceeds the self assessment and to that extent. It has been further held that for recovery of interest, no show cause notice as such is required.

12. As far as the decision of the Tribunal in **T.V.S. Whirlpool** case is concerned, the Tribunal was not dealing with the issue as to whether law of limitation will apply to the recovery of interest as such. The issue was whether the interest was not paid in terms of Section 47 read with Section 61(3) of the Customs Act and in that context it was observed that “The position being similar we hold that the same logic will apply in respect of the recovery to be made under the Customs Act where no period of limitation has been prescribed”. The said observation was made having noted that under Section 28 of the Customs Act, period of limitation

period for claim of refund was six months. In that context, it was observed that where no period of limitation is specifically prescribed for any specific action under the Act, the recovery should satisfy the principle of such general provision of recovery of the duty. The Apex Court dismissed the challenge by observing that as already stated above that it is only reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the claim for interest thereon. Undoubtedly, the Apex Court has recorded the general principle of law in that regard while dismissing the appeal. It is pertinent to note that neither before the Tribunal nor before the Apex Court there was issue as to whether at all any limitation period applies to such claim or not. The decision of T.V.S. Whirlpool cannot support the contention in respect of period of limitation, that necessarily the limitation prescribed under Section 11A would apply. That is not the decision on the subject matter in controversy.

13. Time and again it has been held by the Apex Court and High Courts that in the absence of any limitation being prescribed under the statute, it is not for the Courts or the Tribunal to invent a limitation for such action. Prescribing period of limitation is essentially a legislative function and, therefore, it cannot be encroached upon by the judicial authorities.

14. Considering the facts as above and law laid down by the Apex Court, the action having been taken within a period of five years for recovery, it cannot be said that the action is even beyond the reasonable period for enforcing the recovery of interest.

15. For the reasons stated above, therefore, the appeal fails and is hereby dismissed.

(Justice R.M.Š. Khandeparkar)
President

(Mathew John)
Member (Technical)

Pant