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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

3

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Date **05/08/2011**

Appeal No. E/3747/2010 - EX[DB] WITH E/S/3561/2010-EX

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

To :
M/S SURYA ROSHNI LIMITED,
J-07 TO 11, INDUSTRIAL AREA, MALANPUR,
DISTRICT BHIND (M.P.)
M/S SURYA ROSHNI LIMITED, Appellant

Vs

C.C.E. INDORE **STAY ORDER NO.785/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.695/ 2011 EX[DB]** dated 26-7-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.R.S. SHARMA, ADV.,
C-9/9656, VASANT KUNJ, NEW DELHI 110070

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
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 - 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 (Harvana)
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.

Assistant Registrar
(Excise Appeal Branch)

(1)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 26/07/2011.
DATE OF DECISION : 26/07/2011.

Excise Appeal No. 3747 of 2010 with Stay Application No. 3561 of 2010

[Arising out of the Order-in-Appeal No. IND/311/2010 dated 30/09/2010 passed by The Commissioner (Appeals), Central Excise, Indore.]

For Approval and signature :
Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, 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 would 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?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	Yes

M/s Surya Roshni Limited — Appellants

Versus

CCE, Indore — Respondent

Appearance

Shri R.S. Sharma, Advocate – for the Appellants.

Shri N. Pathak, Authorized Representative (DR) – for the respondent.

CORAM : **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY order No 785/2011 – EX
FINAL Order No. 695/2011-EX Dated : 26/07/11

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

Heard the advocate for the appellants and DR for the respondent. This appeal arises from order dated 30th September 2010 passed by the Commissioner (Appeals), Indore. By the impugned order the appeal filed by the appellants against the order of the Adjudicating Authority has been dismissed. The Additional Commissioner, Indore by his order dated 23rd March 2010 had confirmed the demand of duty and interest and no penalty was imposed.

2. The appellants are engaged in manufacture of Aluminium Cap, GLS Glass Shells, FTL Glass Shells classifiable under Chapter 85 and 70 of the schedule to the Central Excise Tariff Act, 1985. The appellants were supplying goods to their various sister units by way of stock transfer on payment of Central Excise Duty. It was informed by the appellants that they had issued supplementary invoices after finalisation of CAS-4 while the initial value disclosed in invoices was on the basis of balance sheets for the previous financial year. Pursuant to finalisation of CAS-4 on 25th August 2006 for the year 2005-2006 and 29/9/07 for the year 2006-2007 the appellants paid differential duty on 4th November 2006 and 5th January 2008 respectively. They further

deposited differential amount of Rs. 66,05,637/- on 7/1/08 and the appellants, therefore, were required to pay interest on such differential duty paid by them, as above, in relation to the year 2006-2006 and 2006-2007. The show cause notice dated 26/12/2008 in that regard came to be issued on account of failure on the part of the appellants to pay the interest. Further, show cause notice dated 30th September 2009 came to be issued for the period April 2007 to March 2008 demanding the duty alongwith the interest. The notices were contested on behalf of the appellants while contending that they have no interest liability in the facts of the case, wherein there was no determination of differential duty amount paid subsequently by the appellants and being so in the absence of determination of duty by the department provision of Section 11AB are not attracted. Secondly, it was the contention that the demand was barred by limitation as notice was issued in relation to the period 2005-2006 only on 26th December 2008.

3. The learned advocate for the appellants while placing reliance in the decision in the matter of **CCE, Chandigarh vs. Eicher Demm** reported in **2010 (252) E.L.T. 519 (H.P.)**, **Ucal Fuel Systems Ltd. vs. CCE, Chennai** reported in **2007 (216) E.L.T. 370 (Tri. – Chennai)** and **Assistant Commissioner of C.E.,**

Visakhapatnam - I vs. Nagarjuna Agrichem Ltd. reported in **2010 (262) E.L.T. 374 (Tri. - Bang.)**, submitted that the decision of the Apex Court in **CCE, Pune vs. SKF India Ltd.** reported in **2009 (239) E.L.T. 385 (S.C.)** has no obligation to the facts of the case in as much as that the payment of differential duty was not pursuant to any determination duty by the department and secondly there was no demand of duty under show cause notice dated 26th December 2008. According to the learned advocate the differential duty having been paid consequent to the finalisation of the price, there is no justification for demand of interest. He also submitted that obviously the demand under the show cause notice dated 26/12/08 was barred in relation to the year 2005-2006.

4. On the other hand the DR while placing reliance in the decision of the Apex Court in the matter of **SKF India Ltd.** (supra) and **CCE vs. International Auto Ltd.** reported in **2010 (250) E.L.T. 3 (S.C.)** and of the Tribunal in the matter of **CCE, Ghaziabad vs. K.L. Concast (P) Ltd.** reported in **2007 (209) E.L.T. 425 (Tri. - Del.)**, submitted that the law as regards the liability to pay the interest is well settled and there is no question of applicability of provisions of law of limitation and, hence, there is no case to find fault with the impugned order.

5. Section 11AB (1) reads thus :

"**Interest on delayed payment of duty** - (1) 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 2(B), of Section 11A, shall, in addition to the duty, be liable to pay interest at such rate not below [ten per cent] and not exceeding thirty-six per cent. Per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first date of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-section (2B), of Section 11A till the date of payment of such duty:

Provided that in such cases where the duty becomes payable consequent to issue of an order, instruction or direction by the Board under Section 37B, and such amount of duty payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction as the case may be, no interest shall be payable and in other cases the interest shall be payable on the whole of the amount, including the amount already paid."

6. Plain reading of the said provision of law discloses that in the case of any delay in payment of excise duty the assessee is liable to pay the interest for the delayed period. It has nothing to do with the determination of duty by the Departmental Officers. In case of self-assessment if the party fails to pay the duty on due date, obviously even without demand, the assessee would be liable to pay the interest on delayed payment of duty. This aspect has been elaborately discussed by the Apex Court in the matter of **SKF India Ltd.** (supra) and **International Auto Ltd.** (supra) case. In fact, in **International Auto Ltd.** case while reiterating the decision in **SKF India Ltd.** matter, it was held thus :

> "5. Of the two sections dealing with interest Section 11AA relates to the period from expiry of three months from the date of determination of the differential duty under sub-section (2) of Section 11A till the date of payment and Section 11AB is in regard to 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.
>
> 6. In this ease we are concerned with Section 11AB which reads as under.
>
> **11AB. Interest on delayed payment of duty.** - [(1) 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 2(B), of Section 11A, shall, in addition to the duty, be liable to pay interest at such rate not below [ten per cent] and not exceeding thirty-six per cent. Per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first date of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-section (2B), of Section 11A till the date of payment of such duty:

Provided that in such cases where the duty becomes payable consequent to issue of an order, instruction or direction by the Board under Section 37B, and such amount of duty payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction as the case may be, no interest shall be payable and in other cases the interest shall be payable on the whole of the amount, including the amount already paid.]

[(2) The provisions of sub-section (1) shall not apply to cases where the duty had become payable or ought to have been paid before the date on which the Finance Bill, 2001 receives the assent of the President.]

Explanation 1. - Where the duty determined to be payable is reduced by the Commissioner (Appeals), the Appellate Tribunal "National Tax Tribunal" or, as the case may be, the court, the interest shall be payable on such reduced amount of duty.

Explanation 2. - Where the duty determined to be payable is increased or further increased by the Commissioner (Appeals), the Appellate Tribunal "National Tax Tribunal" or, as the case may be, the court, the interest shall be payable on such increased or further increased amount of duty.]

(emphasis added)

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 Act fall miles short of the desired objective. Even as originally cast the provisions were far from very happily framed and worded. Subjected to 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."

7. Plain reading of the above decision does not require any further elaboration in the matter. The demand of interest is squarely justified taking into consideration law laid down by the Apex Court in the above two decisions. As rightly pointed out by DR in such cases question of bar of limitation is not at all attracted. The decisions sought to be relied upon on behalf of the assessee are contrary to the law laid down by the Apex Court in the above two decisions and, therefore, of no help to appellants to seek interference in the impugned order. For the reasons stated above, the appeal fails and hereby dismissed. Stay application is also dispose of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK