(2011) 03 KAR CK 0351

In the Karnataka High Court

Case No : C.E.A. No. 125 of 2007

C.C.E. and S.T., LTU — APPELLANT

Vs

Karnataka Soaps and Detergents Ltd. — RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:
Central Excise Act, 1944 — Section 11 A, 11 A (1)

Citation : (2011) 267 ELT 593

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant; V. Lakshmi Kumaran, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The revenue has preferred this appeal challenging the order passed by the Tribunal which has held that when the differential duty has been paid before the issue of Show Cause Notice, no interest is liable to be paid on such duty.

2. The transaction in question relates to the period from 24-11-2003 to 10-12-2003. Admittedly the Assessee did not pay the duty at the time of clearing the goods but when the Department pointed out the same and even before the issue of notice under Sub-section (1) of Section 11A of the Central Excise Act, 1944 (hereinafter referred to as ''the Act'') the Assessee paid not only the duty but also the interest on the differential duty. Thereafter an application is filed for refund of the interest paid on the ground that they were not liable to pay interest at all as the differential duty was paid even before the issue of Show Cause Notice in question under Sub-section (1) of Section 11A of the Act. The Assessing Authority rejected the said request. Aggrieved by the same, the Assessee preferred an appeal. The Appellate Authority allowed the appeal and ordered for refund which order has been confirmed by the Tribunal. It is against the said order, the present appeal is filed by the revenue.

3. Section 11A of the Act deals with the recovery of duty not levied or not paid or short levied or short paid or erroneously refunded. Section 11AB of the Act deals with the interest on delayed payment of duty. Section 11(A) of the Act was amended by Act No. 14/2001 which came into effect from 11-5-2001 provided that if payment of differential duty is paid, the authority shall not serve any notice under Sub-section (1) of Section 11A of the Act in respect of the duty so paid. The said provision was further amended by Act No. 32/2003 inserting the words on the basis of own ascertainment of such duty or on the basis of the duty ascertained by the Central Excise Officer. Explanation (2) to Sub-Section 2(B) of the Act clarifies the doubt to the effect that the interest u/s 11AB of the Act 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. The cumulative effect of this provision is that when the duly has to be paid on the relevant date an opportunity is given to the Assesses to pay the duty and differential duty before the commencements of the proceedings under Sub-section (1) of Section 11A of the Act. However, even in cases where differential duty is paid before the proceedings were initiated under Sub-section (1) of Section 11A of the Act, the interest for the delayed payment has to be paid. In other words, once there is a delay in payment of duty, interest follows subsequent to the aforesaid amendments.

4. In that view of the matter, in the instant case, the relevant period is 24-11-2003 to 10-12-2003 which is subsequent to the amendment of the provisions. Admittedly the duty was not paid at the time of clearing the goods. However, before the initiation of the proceedings under Sub-section (1) of Section 11A of the Act, not only the differential duty but also the interest thereon was paid but after making such payment, an attempt was made to claim back the interest paid as refund on the ground that they were not liable to pay interest.

5. The Appellate Authority and the Tribunal relying on various judgments have taken a view that the differential duty has been paid before the issue of Show Cause Notice under Sub-section (1) of Section 11A of the Act and therefore, the order passed by the Appellate Authority and the Tribunal is illegal and cannot be sustained. Hence we pass the following:

ORDER

(a) Appeal is allowed.

(b) The impugned order''s passed by the Tribunal as well as the Appellate Authority are hereby set aside and the Order-in-Original passed by the Assessing Authority is restored.

(c) The substantial questions of law framed in this case are answered in favour of the revenue and against the Assessee.

(d) The parties to bear their own costs.