

(2003) 03 JH CK 0021
In the Jharkhand High Court
Case No : Taxation Case No. 12 of 2001

CCE

APPELLANT

Vs

Telco

RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11AC

Citation : (2003) 108 ECR 48 : (2004) 165 ELT 280

Hon'ble Judges : Vishnudeo Narayan, J;V.K. Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The short point involved in this case is with respect to the interpretation of Section 11AB of the Central Excise Act, 1944 relating to the liability to pay interest on the amount of duty as determined and held payable in terms of the adjudication earlier held u/s 11A of the Act. Vide judgment dated 23rd July, 1999 the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT), Eastern Bench, Calcutta, Set aside that part of the order impugned before it whereby penalty was imposed upon the respondent. But in course of the aforesaid judgment of the Tribunal, the question relating to the imposition of interest was not dealt with. Accordingly, the respondent filed a Review Application (calling, it a miscellaneous application for rectification of the mistake) and the Tribunal vide order dated 8.2.2001 while referring to Section 11AB of the Act held that since the period for which the duty in question was held to be payable was between 1.4.1989 to 30.6.1995, which was not covered by Section 11AB of the Act, the respondent was not liable to pay interest on the said amount of Duty determined and payable.

2. In the present application, the Revenue wants us to frame the (following question for law for our adjudication.

Consequent to insertion of Section in 11AB CEA 44 whether in an order of

Adjudication where duty payable is determined for the first time after the insertion of Section 11AB, the Adjudicating Authority would now be empowered to levy interest u/s 11AB upon the duty determined to be payable by the assessee or not even for evasion of duty taking place in the past prior to insertion of Section 11AB.

Section 11AB reads thus:

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 by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, the person liable to pay duty as determined under Sub-section (2) of the 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 per cent per annum, as is for the time being fixed by the Board, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act or the rules made thereunder or from the date of such erroneous refund, as the case may be, but for the provisions contained in Sub-section (2) of Section 11A, till the date of payment of duty.

(2) For the removal of doubts, it is hereby declared that the provisions of Sub-section (1) shall not apply to cases where the duty became payable before the date on which the Finance (No. 2) Bill, 1996 receives the assent of the President.

3. Section 11AB was added in the Central Excise Act, 1944 by the medium of insertion of Finance (No. 2) Act, 1996 and this insertion was made effective from 28.9.1996. Sub-section (2) of Section 11AB clearly and categorically declares that the provisions of Sub-section (1) would not apply to the cases where it became payable before the date on which the aforesaid Finance Act No. 2 of 1996 received the assent of the President. Undoubtedly, Therefore Sub-section (2) of Section 11AB makes the applicability of Sub-section (1) prospective in nature.

4. The learned counsel for the respondent has relied upon a judgment of the Supreme Court pronounced on 25.1.1999 in Civil Appeal No. D-18869 of 1998 filed against the order of CEGAT passed on 19.3.1998 and submitted that the aforesaid Civil Appeal was dismissed by the Supreme Court and the aforesaid order of CEGAT was upheld. That order was passed u/s 11AC of the Act. Section 11AC is, admittedly, in pan materia to Section 11AB. In this case, the Tribunal had held that Section 11AC was prospective in operation.

5. The learned counsel for the respondent also relied upon a judgment of the Supreme Court in the case of Commissioner of Central Excise, Coimbatore v. Elgi Equipments Ltd. reported in (128) ELT 52 (SC). In this case also, their Lordships have held that Section 11AC of the Act is prospective in operation and the illegality committed prior to the insertion of Section 11AC cannot be the subject

matter of penalty under the said provision. Reference is also invited to a Division Bench judgment of the Karnataka High Court in the case of Commissioner of C. Ex. Vs. Supra Foundry Services (P) Ltd., wherein their Lordships have also taken the view that Sections 11AB and 11AC are prospective in operation. We find ourselves in complete agreement with the aforesaid view and based on the aforesaid discussion and our understanding of Section 11AB, particularly the specific language employed in Sub-section (2) thereof, we hold that this Section being prospective in operation, the respondent is not liable to pay interest on the duty determined and payable for the period in question before the Section was made applicable and, accordingly, we have no hesitation in holding that the Tribunal was correct and justified in passing the order dated 8.2.2001.

6. The application of the Revenue is, accordingly, dismissed.