
(2011) 06 KAR CK 0012
In the Karnataka High Court
Case No : C.E.A. No. 103 of 2008

Commissioner of C. Ex. and S.T., Bangalore

APPELLANT

Vs

Mico Ltd.

RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Central Excise Act, 1944 — Section 11 A (2)

Citation : (2012) 281 ELT 680

Hon'ble Judges : V.G. Sabhahit, J;Ravi Malimath, J

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant; K.S. Ravi Shankar, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal is fixed by the Commissioner of Central Excise and Service Tax being aggrieved by the order passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "the Tribunal"), South Zonal Bench, Bangalore in Appeal No. E193/2008 dated 10-10-2008, wherein the Tribunal while dismissing the appeal filed by the revenue, has held that since there is no determination or demand of duty u/s 11A(2) of the Central Excise Act, 1944 (hereinafter referred to as "the Act") in respect of revision of prices in the show cause notice, interest could not be levied u/s 11AB of the Act. We have heard the learned Counsel appearing for the appellant and the learned Counsel appearing for the respondent.

2. The learned Counsel appearing for the appellant submits that mere fact that the respondent had deposited the duty before issue of show cause notice did not relieve him from liability of paying interest and wherefore, the order passed by the Tribunal is erroneous.

3. The learned Counsel appearing for the respondent submitted that in view of the various decisions of the High Courts with regard to reduction of Government

litigation, a policy decision has been taken by the Central Board of Excise and Customs (hereinafter referred to as "the Board"), New Delhi, by issuing a Circular/Instruction bearing F. No. 390/Misc./163/2010-JC, dated 20-10-2010 in respect of "Litigation - Monetary limits for departmental appeal before CESTAT and High Courts that no appeal shall be filed in High Courts in cases where the duty involved or total revenue including fine or penalty is Rs. 2,00,000/- and below. The learned counsel has produced copy of the said instructions before this Court.

4. The learned Counsel appearing for the appellant, in reply, submitted that the said instructions were issued subsequent to filing of this appeal and the appeal was filed on 19-12-2008.

5. We have given our careful consideration to the contentions urged by the learned Counsel appearing for the parties and scrutinized the material on record.

6. The material on record would clearly show that the fact that the respondent had deposited duty before issuance of show cause notice by the revenue is not in dispute. In view of the decisions of the various High Courts including, the decision of the Bombay High Court in the case of Commr. of Central Excise Vs. Techno Economic Services Pvt. Ltd., wherein the Bombay High Court had asked the Board to consider issuing circulars on the lines of circulars issued by the Central Board of Direct Taxes to reduce the litigations arising out of indirect tax litigations, circulars have been issued by the Board from time to time. In pursuance of the National Litigation Policy, the Board issued circular/instruction bearing F. No. 390/Misc./163/2010-JC, dated 20-10-2010 to the effect that no appeal shall be filed to the High Court where the duty involved or total revenue including find or penalty is Rs. 2,00,000/- and below. In view of the said circular, it is not open to the appellant to contend that even if the value of the subject matter of the appeal is less than Rs. 2 lakhs, the appeal is maintainable. Admittedly, the value of the subject matter of this appeal is Rs. 4,246/-. Accordingly, we hold that this appeal is devoid of merit and pass the following order. The appeal is dismissed.