**(2010) 04 KAR CK 0257**

**In the Karnataka High Court**

**Case No :** C.E.A. No. 35 of 2007

Commissioner of C. Ex. APPELLANT

Vs

Aravind Fashions Ltd. RESPONDENT

**Date of Decision :** 01-04-2010

**Acts Referred:**
Central Excise Act, 1944 — Section 11 AB

**Citation :** (2010) 255 ELT 53

**Hon'ble Judges :** K.L. Manjunath, J;B.V. Nagarathna, J

**Bench :** Division Bench

**Advocate :** Raghavendra B. Hinjar, for N.R. Bhaskar, for the Appellant; K.S. Ravishankar, for the Respondent

**Final Decision :** Allowed

## Judgement

B.V. Nagarathna, J.—The revenue has preferred this appeal by challenging the Final Order No. 1336/2006 dated 11-8-2006, passed by CESTAT in Appeal No. E/409/06, by raising the following questions of law which has been framed by this Court on 4-7-2007 while admitting the appeal:

Whether the tribunal was right in not holding that the assessee is not liable to pay the interest u/s 11AB on the ground that the assessee had deposited the excess duty amount prior to issuance of show cause notice?

2. We have heard the learned Counsel for the appellant and the learned Counsel for the respondent-assessee and perused the material on record.

3. The question that was involved before the Tribunal was whether the respondent herein was required to pay interest in terms of Section 11AB of Central Excise Act. In order to determine the said question, it is necessary to consider as to whether the assessee had deposited duty before the issuance of show cause notice. The Tribunal has not applied its mind to this aspect of the matter. Though in the order in original, it has been stated that notice dated 10-8-2004 was issued to the respondent and on 10-9-2004 the amount was

 

deposited. Hence the question arises as to whether assessee had discharged its liability in time or not and as to whether interest was attracted to the facts of the case by virtue of Section 11AB of the Act. The tribunal has merely relied upon certain decisions and has set aside interest ordered by the authorities. We find that in the absence of there being any consideration of the material facts of the instant case and by merely placing reliance on certain decisions, the tribunal could not have set aside the interest confirmed by the authorities. Hence, we set aside the order of the Tribunal and remand the matter back to it with a direction to consider the material facts of the present case and as to whether the respondent herein was required to pay interest in terms of Section 11AB of the Act by taking into consideration the circumstances mentioned in the said provision.

4. In view of the said order, substantial questions of law is answered in favour of the revenue. Accordingly, the appeal is allowed.

 