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**(2011) 04 KAR CK 0017**

**In the Karnataka High Court**

**Case No :** C.E.A. No. 130 of 2009

Commissioner of C. EX. — APPELLANT

Vs

J.K. Industries Ltd. — RESPONDENT

**Date of Decision :** 20-04-2011

**Acts Referred:**

**Citation :** (2011) 269 ELT 455 : (2013) 21 GSTR 466

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

**Bench :** Division Bench

**Advocate :** Y. Hariprasad, for the Appellant;

**Final Decision :** Allowed

## Judgement

N. Kumar, J.—This is a revenue appeal challenging the order passed by the Tribunal 2009 (247) E.L.T. 481 (Tri. - Bang.) which has set-aside the deduction of interest made out of the amount to be refunded and directed the revenue to pay the amount ordered to be refunded in terms of the order.

2. The Assessee filed an application for rebate of Rs. 10,74,800/-. The adjudicating authority after enquiry, sanctioned the same but he appropriated an amount of Rs. 1,82,734/- being the interest payable by the Assessee arising out of the final order No. 74/2005 dated 10-1-2005 and paid only the balance amount. Aggrieved by such appropriation, the Assessee filed and appeal before the learned Commissioner (Appeals) who dismissed the appeal upholding the order of the adjudicating authority. The said order was challenged before the Tribunal. It was contended before the Tribunal that unless the adjudicating authority has determined the interest payable, the question of appropriating the interest out of the rebate sanctioned would not arise. In fact, they requested the authorities to issue the show cause notice demanding interest and pass appropriate orders which has not been done. Therefore, it was contended that the aforesaid appropriation of interest out of the amount ordered to be refunded is illegal. The amount was determined by the Tribunal by its order dated

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10-1-2005. The amount so determined was paid by the Assessee within a period of three months and therefore, it proceeded to hold that the interest claimed is not in accordance with law an therefore, it set-aside the order of the appellate authority as well as thee adjudicating authority and upheld the refund in its entirety. Aggrieved by the same, the revenue is in appeal.

3. We have heard the Learned Counsel for the parties.

4. From the order of the Appellate Tribunal, it is clear that the revenue on 13-4-2005 issued a notice to the Assessee requesting them to work out the interest on the duty amount of Rs. 1,32,521/- and remit the same to the Government account immediately. On receipt of the said letter, the Assessee sent its reply on 18-4-2005. It was their specific contention that the liability of interest starts if the amount adjudicated is not paid within three months from the date of the order of adjudication and therefore, they contended that interest is payable. On receipt of the said reply and after taking note of the order passed by the Tribunal, by a letter dated 10-5-2005 a communication was sent to the Assessee claiming a sum of Rs. 1,82,734/- towards interest and how the said amount was arrived at is clearly mentioned in the annexure where the rate of interest, number of days for which interest is charged is clearly mentioned. Therefore, when once the Assessee was liable to pay interest and the said order has not been challenged by the Assessee in a manner known to law, the authorities were justified in deducting the said amount of interest out of the amount ordered to be refunded. In this connection, Learned Counsel for the Assessee relied on a judgment of this Court in Commissioner of C. Ex. Vs. Stella Rubber Works, and contended in the absence of any adjudication of the interest payable, the authorities could not have deducted the said amount.

5. The said judgment has no application because before deducting, a notice was issued claiming interest which was replied to by the Assessee and thereafter, calculation is made. The said calculation is furnished to the Assessee which shows the amount of interest payable.

6. Insofar as the understanding of the Assessee regarding the liability to pay interest is concerned, it is contrary to law. Within three moths from the date of adjudication, he is liable to pay duty but that duty ought to have been paid on the due date and since it is not paid on the due date, from that day when it was legally liable to be paid, till the date of actual payment of adjudication, the Assessee is liable to pay interest. That is the amount which is claimed in this case.

7. In that view of the matter, the substantial question of law which is framed in this appeal is answered in favour of the revenue and against the as-sessee. Accordingly, the order of the Tribunal is unsustainable. Hence, we pass the following:

ORDER

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(1) Appeal is allowed.

(2) The impugned order passed by the Tribunal is set-aside. The order passed by the original authority as confirmed by the first Appellants authority is restored.

(3) Parties to bear their own costs.

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