
(2011) 02 KAR CK 0030
In the Karnataka High Court
Case No : C.E.A. No. 154 of 2007

Commissioner of C. EX., Bangalore-III

APPELLANT

Vs

Stella Rubber Works (Unit-II)

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Central Excise Act, 1944 — Section 11, 11 AA

Citation : (2012) 275 ELT 404

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

Bench : Division Bench

Advocate : .M. Venkata Reddy, for the Appellant; G. Sampath, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the revenue challenging the order passed by the Tribunal which had interfered with the order passed by the assessing authority as well as the first appellate authority holding that the rebate claimed cannot be adjusted to the claims of the Department.

2. M/s. Stella Rubber Works (Unit II) the assessee is in the business of manufacture of tread rubber. On gathering intelligence that M/s. Stella Rubber Works are suppressing the value of their clearances by fraudulent means with an intention to evade Central Excise duty, the Central Excise Officers visited the business premises and seized the connected documents/records. Subsequently they were issued with show cause notice for the demand of differential duty payable by them for the period from 1982-83 - 1984-85 was issued. After the enquiry the adjudicating authority held that a sum of Rs. 7,46,616.98/- was the duty payable along with a penalty of Rs. 3,00,000/-. On appeal the said payment was confirmed and the penalty was reduced to Rs. 75,000/-. Thus an amount of Rs. 8,21,616.98/- was due from the assessee to the Department. The request of the assessee to pay the aforesaid amount in instalments was not acceded to by the Department. The assessee paid two instalments on their own 1-12-2003 a

penalty of 75,000/-, and on 31-12 2003, duty of Rs. 7,46,616.98/-. While rejecting their request for payment of arrears of instalments they were intimated that the delay in payment of arrears would result in their liability to pay interest u/s 11-AA of the Act. They did not pay the interest.

3. The assessee has one more Unit referred to as Unit-II. The assessee claimed a rebate of duty paid amounting to Rs. 2,07,937/- and a sum of Rs. 2,42,608/-. The rebate was sanctioned. However, the sanctioned amount of rebate was appropriated towards the interest amount which was due from the assessee as per the orders referred to supra. Aggrieved by the said Judgment, the assessee preferred an appeal to the Commissioner of Appeals who upheld that order and dismissed the appeal. Aggrieved by the same, the assessee preferred an appeal to the Tribunal. The Tribunal held that the rebate cannot be adjusted towards the interest due of the assessee and therefore it set aside the said order of adjustment. Aggrieved by the same, the revenue is in appeal.

4. The learned counsel appearing for the revenue contended that by virtue of Section 11 of the Central Excise Act, 1944, the revenue was empowered to adjust the amounts due to the revenue by way of interest out of the amount due by the Department to the assessee by way of rebate. Therefore, the Tribunal committed a serious error in interfering with the said order of adjustment and therefore he submits that the impugned order requires to be interfered with. Section 11 of the Act would deal with the recovery of sums due to the Government reads as under :-

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A perusal of the aforesaid provision makes it very clear that if any duty or other sums due to the Central Government under the Act and recovery of certain amounts, if any person owing money to the assessee, the revenue may proceed against such person and recover the duty and other sums due to the Government. It is in the nature of garnishee proceedings. The said provision does not contemplate adjustment of monies due to the assessee towards the amount due to the revenue. Therefore reliance placed on the said provision does not help the revenue. Apart from the said provision, the learned counsel was not able to point out any other provision which enables the revenue to adjust the amounts due to them as against the amounts due by them to the assessee. In fact reliance is placed on the judgments of CESTAT which gives an impression that adjustment is permissible. Such adjustment is not based on any statutory provision. When once the adjudicating authority has held that the assessee is entitled to refund of the amounts which he had paid to the Department, in the absence of a specific provision authorising the revenue adjusting the said amount towards due to them, it is improper for them to make such adjustment. In this view of the matter, there is no question of invoking equitable considerations. As without authority they cannot levy any duty on the assessee and without authority of the law they also cannot adjust the amounts which are ultimately due to the assessee when the amounts are due by the assessee to the

Department. After making refund of the amount which is due it is open to the revenue to proceed against the assessee to recover the amounts under the provisions of the Act. Therefore, the Tribunal committed no illegality in setting aside the said adjustment. We do not see any infirmity in the said order passed by the Tribunal which calls for interference. Accordingly the appeal is dismissed.

5. However, the dismissal of the appeal will not come in the way of the revenue recovering the amount due if any.