
(2011) 07 KAR CK 0238
In the Karnataka High Court
Case No : C.E.A. No. 33 of 2007

Commissioner of Central Excise, Bangalore-I

APPELLANT

Vs

Aravind Brands Ltd.

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Central Excise Act, 1944 — Section 11 AB

Citation : (2011) 273 ELT 239

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

Bench : Division Bench

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

Final Decision : Allowed

Judgement

N. Kumar, J.—This is a Revenue's appeal against the order passed by the Customs, Excise & Service Tax Appellate Tribunal (hereinafter called as Tribunal" for brevity) which held that the confirmation of interest is bad and therefore, set aside the same.

2. A reading of the impugned order shows that the Tribunal has proceeded on the assumption that what is involved in the appeal is as to whether the appellants are required to pay interest in terms of Section 11AB of Central Excise Act, when they have deposited the duty before the issue of show cause notice, relying on several judgments of this Court as well as the Judgments of other Courts, wherein it has been held that when amounts are deposited before issue of show cause notice, no interest is payable. Against the said order, the Revenue is in appeal,

3. Learned counsel for the Revenue submits that when this Court has taken a view in the case of C.C.E. and S.T., LTU Vs. Karnataka Soaps and Detergents Ltd., that once there is delay in payment of duty, interest follows. Therefore, merely because the duty was paid before issue of show cause notice, would not absolve the assessee from paying the tax.

4. Per contra, learned counsel for the assessee submitted that unfortunately that was not the question which was before the Tribunal and it has given relief to the assessee by following the aforesaid judgments which had no application to the facts of the case.

5. The case of the assessee is that he had availed Cenvat credit for the goods manufactured by it up to 9-7-2004. From 9-7-2004 the goods manufactured by the assessee were completely exempted from payment of excise duty. As on 9-7-2004 in their books there was unutilized Cenvat credit to be eligible for the benefit of the exemption under the Notification No. 30/2004-C.E., dated 9-7-2004. They ought to have reversed those entries. There was a delay in reversal of those entries. It is true that for that period interest is claimed. Therefore, it is contended that the payment of interest is now well settled as compensatory in nature, when the duty is payable on a particular date and if it is paid on a subsequent date, the Revenue has to be compensated for the delay in payment of duty. It is for that purpose, the interest is charged. Therefore, the interest payable is compensatory in nature. In the instant case, there is no delay in payment of duty. The delay is in reversal of Cenvat credit. Consequently, the Revenue did not suffer any loss because from 9-7-2004 the products manufactured by the assessee were completely exempted from tax. Therefore, it is submitted that in those circumstance, the assessee contended that he is not liable to pay interest. In spite of appreciating the said case, the Tribunal proceeded on a wrong assumption. But, however, in the end of the day, gave the relief to the assessee. The assessee could not have challenged the said order on that ground.

6. In the light of what is stated above as facts are not in dispute, the order passed by the Tribunal cannot be sustained. They have not applied their mind to the facts of the case. In the circumstance, proper course is to-set aside the order of the Tribunal and remand the matter back to the Tribunal for fresh consideration, keeping in mind the facts of the case and the law on the point.

7. Accordingly, appeal is allowed. Impugned order is set aside. The matter is remanded to the Tribunal for fresh consideration in the light of the facts arising in this appeal.