
(2002) 03 JH CK 0088
In the Jharkhand High Court
Case No : Taxation Case 12 of 2001

The Commissioner of Central Excise

APPELLANT

Vs

Telco, Jamshedpur

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11AB, 11AB(2)

Citation : (2002) 03 JH CK 0088

Hon'ble Judges : V.K. Gupta, C.J; Vishnudeo Narayan, J

Bench : Division Bench

Advocate : P.K. Prasad, CGSC, for the Appellant; V.P. Singh, M.P. Devnath and A.K. Sinha, for the Respondent

Judgement

1. The short point involved in this ease Is with respect to the interpretation of Section 11-AB of the Central Excise Act. 1944 relating to the liability to pay Interest on the amount of duty as determined and held payable in terms of the adjudication earlier held u/s 11-A of the Act. Vide judgment dated 23rd, July. 1999 the Customs. Excise & Gold (Control) Appellate Tribunal (CEGAT). Eastern Bench. Calcutta, set aside that part of the order impugned before it whereby penalty was imposed upon the respondent. But in course of the aforesaid judgment of the Tribunal, the question relating to the imposition of interest was not dealt with. Accordingly, the respondent filed a Review Application (calling it a miscellaneous application for rectification of the mistake) and the Tribunal vide order dated 8.2.2001 while referring to Section 11-AB of the Act held that since the period for which the duty in question was held to be payable was between 1.4.1989 to 30.6.1995. which was not covered by Section 11-AB of the Act. the respondent was not liable to pay interest on the said amount of duty determined and payable.

2. In the present application, the Revenue wants us to frame the following question of law for our adjudication.

"Consequent to insertion of Section in 11AB CEA "44 whether in an order of

Adjudication where duty payable is determined for the first time after the insertion of Section 11-AB, the adjudicating Authority would now be empowered to levy interest u/s 11-AB upon the duty determined to be payable by the assessee or not even for evasion of duty taking place in the past prior to insertion of Section 11-AB."

Section 11-AB reads thus :

"11-AB. Interest on detailed payment of duty.--(1) Where any duty of excise-has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, the person liable to pay duty as determined under Sub-section (2) of Section 11-A shall, in addition to the duty, be liable to pay interest at such rate not below ten per cent and not exceeding thirty per cent per annum, as is for the time being fixed by the Board, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act or the rules made thereunder or from the date of such erroneous refund, as the case may be, but for the provisions contained in Sub-section (2) of Section 11-A, till the date of payment of such duty.

(2) For the removal of doubts, it is hereby declared that the provisions of Sub-section (1) shall not apply to cases where the duty became payable before the date on which the Finance (No. 2) Bill. 1996 receives the assent of the President."

3. Section 11-AB was added in the Central Excise Act. 1944 by the medium of insertion of Finance (No. 2) Act. 1996 and this insertion was made effective from 28.09.1996. Sub-section (2) of Section 11-AB clearly and categorically declares that the provisions of Sub-section (1) would not apply to the cases where it became payable before the date on which the aforesaid Finance Act No. 2 of 1996 received the assent of the President. Undoubtedly, therefore, Sub-section (2) of Section 11-AB makes the applicability of Sub-section (1) prospective in nature.

4. The learned Counsel for the respondent has relied upon a judgment of the Supreme Court pronounced on 25.1.1999 in Civil Appeal No. D-18869 of 1998 filed against the order of CEGAT passed on 19.3.1998 and submitted that the aforesaid Civil Appeal was dismissed by the Supreme Court and the aforesaid order of CEGAT was upheld. That order was passed u/s 11-AC of the Act. Section 11-AC is, admittedly, in pari-materia to Section 11-AB. In this case, the Tribunal had held that Section 11-AC was prospective in operation.

5. The learned Counsel for the respondent also relied upon a judgment of the Supreme Court in the case of CCE v. Elgi Equipments Ltd. . In this case also, their Lordships have held that Section 11-AC of the Act is prospective in operation and the illegality committed prior to the insertion of Section 11-AC cannot be the subject matter of penalty under the said provision. Reference is also invited to a Division Bench judgment of the Karnataka High Court in the

case of Commissioner of C. Ex. Vs. Supra Foundry Services (P) Ltd., . wherein their Lordships have also taken the view that Section 11-AB and 11-AC are prospective in operation. We find ourselves in complete agreement with the aforesaid view and based on the aforesaid discussion and our understanding of Section 11-AB. particularly the specific language employed in Sub-section (2) thereof, we hold that this section being prospective in operation the respondent is not liable to pay interest on the duly determined and payable for the period in question before the section was made applicable and accordingly, we have no hesitation in holding that the Tribunal was correct and justified in passing the order dated 8.2.2001.

6. The application of the Revenue is accordingly dismissed.