(2015) 04 KAR CK 0227

In the Karnataka High Court

Case No : C.E.A. No. 58/2014 and C.E.A. Nos. 3-5 of 2015

The Commissioner of Central Excise Customs and Service Tax — APPELLANT

Vs

BEML Limited and Others — RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11, 11A, 11A(1), 11-AA

Citation : (2015) 04 KAR CK 0227

Hon'ble Judges : Vineet Saran, J;S. Sujatha, J

Bench : Division Bench

Advocate : Y. Hanprasad, for the Appellant

Judgement

Vineet Saran, J.

1. These appeals have been filed challenging the order dated 16.6.2014 passed by the CESTAT, South zone bench, Bangalore, whereby the four appeals filed by the respondent-assessee have been allowed.

2. The brief facts of this case are that the respondent-assessee is a Public Sector Undertaking engaged in the manufacture of bulldozers, shovels, excavators, loaders etc., falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. The short dispute involved in the present appeals relate to payment of Central Excise Duty for the period 29.4.2010 to 31.3.2011. Show cause notice with regard to nonpayment of Central Excise Duty for the aforesaid period was issued by the revenue on 22.4.2013. The sole question involved is as to whether the show cause notice dated 22.4.2013 could have been, in the facts of the present case, issued beyond the prescribed period of one year as provided under Section 11A of the Central Excise Act, 1944 (in short Act'').

3. The admitted facts are that after the amendment which was brought in by Finance Act, 2011 and given retrospective effect from 29.4.2010 the respondent assessee was liable to pay duty on certain goods on which the assessee did pay the requisite duty from 1.4.2011. But according to the appellant-revenue, the

respondent defaulted in payment of duty for the period 29.4.2010 to 31.3.2011. Admittedly, notice for the said period was given on 22.4.2013 beyond the prescribed period of one year. The relevant Section 11A(1) and (4) of the Central Excise Act, 1944 are reproduced below:

"[11-A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.-(1) Where any duty of excise has not been levied or paid or has been short-levied or short -paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,-

(a) the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

(b) the person chargeable with duty may, before service of notice under clause(a), pay on the basis of,-

(i) his own ascertainment of such duty; or

(ii) duty ascertained by the Central Excise Officer, the amount of duty along with interest payable thereon under section 11-AA.

(2)-------------

(3)-------------

(4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of-

(a) fraud; or

(b) collusion; or

(c) any willful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,

by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11-AA and a penalty equivalent to the duty specified in the notice."

4. Under Sub-section (4) of Section 11, the notice could have been issued within a period of five years from the relevant date provided there was fraud, collusion,

willful mis-statement, suppression of facts or contravention of any provisions with intent to evade payment of duty, by the assessee.

5. Though the learned counsel Sri. Y. Hanprasad for the appellant has vehemently argued that there was suppression of facts by the assessee and as such, the limitation for issuing the show cause notice would be five years and not one year, but the Tribunal has negated the same and has given a finding of fact holding that no case had been made out for invoking the extended period.

6. Although there are about dozen grounds taken in the appeal, but none specifically relates to any suppression of facts by the assessee. Even the questions of law which have been framed in the appeal do not specifically relate to suppression of facts. Admittedly, the appellant had paid the Central Excise Duty to the tune of Rs. 44 crores for the period 1.4.2011 to 31.3.2013. If there was any default in deposit of duty for the period prior to 1.4.2011, the assessee could have been issued notice within the statutory period as provided under Section 11A of the Act, which in normal course would be one year, and five years in cases falling under Sub-section (4). In the absence of appellant having been able to satisfy the Tribunal on facts that the present case falls within Sub-section (4) of Section 11, the notice issued to the respondent beyond the period of one year cannot be justified in law.

7. In the absence of appellant having been able to satisfy the Tribunal in this regard and there being a specific finding of fact given by the Tribunal that "in the absence of case for invoking extended period, the payment for the period beyond the normal period of limitation cannot be sustained" and also in view of the fact that no specific ground in this regard has been taken, we do not find any good ground to interfere with the finding recorded by the Tribunal and consequently, with the order allowing the appeals of the assessee.

8. In view of the aforesaid, we are of the opinion that no substantial question of law is raised in these appeals, which may require determination of this Court.

Appeals are accordingly dismissed.

