Man Structurals Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-10-2003

Reported in : (2004)(163)ELT392TriDel

Judge : P Bajaj, M T K.D.

Appellant : Man Structurals Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. In this appeal which has been filed by the appellants against the impugned order-in-original, the appellants have only disputed their liability to pay interest as confirmed against them under Section 11AB of the Act. The learned Counsel has contended that the provisions of Section 11AB could not be invoked for demanding the interest as there was no suppression of the facts by the appellants from the Department.

Even the show cause notice was issued to them within a period of one year without alleging any suppression of the material facts from the Department by the appellants.

2. On the other hand, the learned SDR has reiterated the correctness of the impugned order.

3. We have heard both the sides. The facts are not much in dispute. The appellants were admittedly not entitled to the benefit of the Notification 108/95,

dated 28-8-95 as the supply of the goods by them was to the authorities not included in the above said notification.

They had even paid duty voluntarily by debiting in their RG-23A Part II on 19-12-2002 and the same has been even appropriated. No penalty under Section 11AC has been imposed on them by the Commissioner.

4. We find that even the adjudicating authority has observed that there was no suppression of the material facts by the appellants. In para 18, it has been recorded that "there was no intention on the part of the assessee to evade payment of duty by way of irregular availment of the benefit of Notification 108/95-C.E. as the clearances were effected with due permission of the Department and under bona fide belief that they were entitled to the benefit of the aforesaid notification." For this reason no penalty had been imposed on the appellants by the adjudicating authority.

5. No doubt earlier, it was stipulated in Section 11AB that for charging the interest from an assessee, it was essential to prove that short-payment or nonpayment of duty, etc., was on account of fraud, collusion and suppression of material facts by him from the Department.

But provisions of this Section had been amended in the Finance Act, 2001 and in the amended provision, the words "suppression, fraud, collusion" had been omitted intentionally by the legislature.

Therefore, even in the absence of proof of any fraud, collusion or suppression of the facts by the assessee, still he is liable to pay the interest on the short-paid or non-paid duty amount. This amendment came into force on 11-5-2001. Therefore, the appellants are liable to pay interest from that date onwards till they paid the duty.

6. The impugned order accordingly, stands modified and the interest payable by the appellants in respect of duty short-paid by them from 11-5-2001, till the date of payment. Except for this modification, the impugned order of the adjudicating authority is maintained. The appeal of the appellants accordingly stands disposed

of.