**Commissioner of Central Excise Vs. Venus Industries**

**Commissioner of Central Excise Vs. Venus Industries**

**SooperKanoon Citation** : sooperkanoon.com/33517

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Dec-19-2003

**Reported in** : (2004)(92)ECC537

**Judge** : S Kang, a T V.K.

**Appellant** : Commissioner of Central Excise

**Respondent** : Venus Industries

**Judgement** :

1. In this appeal, filed by the Revenue, the issue involved is whether the interest is demandable from M/s. Venus Industries under Section 11AA of the Central Excise Act.

2. Shri P.M. Rao, learned DR, submitted that a show cause notice dated 22-3-91 was issued to M/s. Venus Industries for demanding the duty for the period from 1-3-86 to 13-8-88 as they had wrongly availed of the small scale exemption benefit under Notification No. 175/86-C.E.; that the matter was adjudicated by the Collector under Order-in-Original No.26/92, dated 23-4-92, by which he confirmed the demand of duty of Rs. 10,50,165.76 and penalty of Rs. 50,000/-was imposed; that, however, on appeal, the appellate Tribunal, vide Final Order No. 384/2000-B, remanded the matter to the Commissioner for consideration of the applicability of the Proviso (b) to Para 4 of the Notification No.175/86; that the Commissioner, in de novo proceedings under Order-in-original No. 45/2001 dated 28-11-2001, has denied the benefit of small scale exemption and demanded Central Excise duty

amounting to Rs. 9,49,064.11, besides imposing a penalty of Rs. 50,000/-; that on appeal, the appellate Tribunal, vide Final Order No. 315/02-B, dated 2-8-2002, upheld the demand of duty and reduced the penalty to Rs. 10,000/-. He, further, submitted that the Deputy Commissioner has directed the respondents to pay the interest under Section 11AA of the Central Excise Act; that the Commissioner (Appeals), under the impugned order, has allowed the appeal of the respondents against demand of interest on the ground that the interest was never demanded in the initial show cause notice as well as in the Order-in-original passed by the Commissioner and that Section 11AA came into effect on 26-8-95 and the demand pertains to the earlier period; that the Commissioner (Appeals) had also observed that the respondents had discharged their duty liability alongwith the penalty within the stipulated period after passing of the final order of the CEGAT on 2-8-2002. The learned DR contended that there is no necessity of explicit mention of interest liability in the show cause notice since the legal provision in the Act is explicit; that as per the provisions of Section 11AA of the Act, interest on delayed payment of duty is to be recovered from the defaulter; that as the dues were not paid till 26-8-95, they are liable to pay interest. He, finally, mentioned that the respondents have deposited the duty amount in instalments and the last instalment was paid on 12-12-2002 and, accordingly, they are required to pay interest for the period from 26-8-95 to 11-12-2002. Reliance has also been placed on the decision in the case of C.C.E., Bhu-baneswar-II v. Orissa Concrete Products (India) Pvt. Ltd., 2001 (133) E.L.T. 787 (Tri.-Kolkata), wherein the Tribunal has held that the Provision of Section 11AA clearly shows that for the arrear cases pending for recovery before the enactment of Finance Act, 1995 if the defaulter fails to pay the duty within a period of three months from the date of enactment, he shall be liable for payment of interest.

3. Countering the arguments, Sh. J.P. Kaushik, learned Advocate, submitted that the demand of Central Excise duty was confirmed against the respondents by invoking the extended period of limitation and the necessary provisions in this regard are contained in Section 11AB of the Central Excise Act and not under Section 11AA; that the provisions of Section 11AA are "subject to provisions contained in Section 11AB" and as such, when the interest on delayed payment of duty which has been short levied, etc. is payable under Section 11AB, the interest

under Section 11AA cannot be demanded; that it is evident from Part III of the Supplementary Instructions dealing with "Interest, Penalty, Confiscation, Duty Payment Under Protest" wherein it is mentioned that in the normal case, interest will be charged after three months of the determination of duty liability till the date of payment of duty and in case the duty is not paid, on account of fraud, suppression, etc., the interest will be charged from the 1st date of the month following the month in which the duty was not paid; that this shows that the provisions of Section 11AA are applicable only when the duty is demanded for the normal period of limitation. He also submitted that the interest was not demanded in the show cause notice and as such the levy of interest goes beyond the scope of show cause notice. Reliance has been placed on the decision in the case of Bhansali Engg. Polymers Ltd. v C.C.E., Bhopal, 2001 (133) E.L.T. 213 (T) = 2001 (44) RLT 151 (CEGAT - Del.). Finally the learned Advocate, submitted that the Ministry under Circular No. 665/46/02-CX., dated 26-8-2002 has clarified that the net effect of the judgment in the case of M.P. Tapes is that Section 11AB of the Central Excise Act can be invoked only in respect of clearances effected after 28-9-96 irrespective of the date of passing of the adjudication order; that similarly, the interest under Section 11AA can only be demanded in respect of clearances effected after Section 11AA was inserted in the Central Excise Act.

4. We have considered the submissions of both the sides. Section 11AA of the Central Act, which came into effect from 26-5-1995 provides for payment of interest if a person fails to pay the duty as determined under Sub-section (2) of Section 11A of the Act within three months from the date of such determination. A show cause notice under Section 11A of the Central Excise Act is issued for demand of duty of Excise, which has not been levied or short-levied, etc. In the show cause notice, the demand of interest cannot be made as it cannot be presumed that the person concerned would not honour the demand once it is determined against him under the provisions of Sub-section (2) of Section 11A of the Act. The question of charging interest on delayed payment will arise only once the demand of duty has been determined under Section 11A(2) of the Act. Thus, there is no requirement, while issuing the show cause notice for demand of duty to invoke provisions of interest under Section 11AA of the Act. We also do not find any substance in the submissions of the learned Advocate that the interest under

Section 11AA cannot be demanded in cases where duty has not been paid, etc. on account of fraud or suppression. Section 11AB of the Central Excise Act provides for demand of interest if the duty has not been levied, etc. on account of fraud, collusion, etc. In such a case, the demand of interest arises from the 1st day of the month succeeding the month in which the duty ought to have been paid under Act whereas under Section 11AA, the interest is payable only after three months from the date of determination of duty liability under Section 11A(2) of the Act. No doubt, the provisions of Section 11AA are subject to provisions contained under Section 11AB. It does not mean that the interest cannot be demanded under Section 11AA if any person fails to pay the duty determined against him under Section 11A(2) of the Act.

We, therefore, hold that the respondents, in the present matter, are liable to pay the interest under Section 11AA of the Act as they have not paid the duty determined against them within three months of the determination. However, we find that the duty has been finally determined under Section 11A(2) of the Act only by the Commissioner under Order-in-Original No. 45/01, dated 28-11-2001 and not before the said date. The entire payment of duty has been made by 12-12-2002.

Thus, the interest under Section 11AA will be payable by the respondents on the duty after three months from the date of determination of the duty i.e. 28-11-2001 to 12-12-2002.