Dev Ashish Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-05-2004

Judge : A Wadhwa

Appellant : Dev Ashish

Respondent : Commissioner of Central Excise

Judgement :

1. As per facts on records, Addl. Commissioner, Central Excise, Mumbai passed an Order-in-Original dated 08.11.2000 confirming demand of duty of approximately Rs. 15 lakhs against the appellant as also imposing penalty of an identical amount upon them. In the said order, Addl.

Commissioner also ordered the appellant to pay interest on the confirmed demand in terms of Section 11AB of the Central Excise, Act, 1944. According to the appellant, they accepted the said order of the Addl. Commissioner and paid the duty amount along with the interest of Rs. 10,62,682/- which was calculated by the department. However, subsequently they realized the above calculation was for the entire period whereas the interest was required to be calculated only for the period effective from 28.9.1996. Accordingly, they filed refund claim of Rs. 5,51,380/- with the Revenue. The said refund claim was adjudicated by the Original adjudicating authority who rejected the same on the ground that Section 11AB was applicable even for the period prior to 28.9.1996. Being aggrieved with the said order of the Deputy Commissioner the appellant filed an appeal before the Commissioner (Appeals) who rejected the same on the ground that as the appellant has not filed any appeal against the 1st order confirming duty demand and interest, their refund claim is premature.

2. The appellant is aggrieved with the said order. Hence the present appeal. My attention has been drawn to the earlier order dated 8.11.2000, wherein the amount of interest has been confirmed in terms of provision of Section 11AB. As such there was no occasion for the appellant to feel aggrieved with the said direction so as to file appeal there again (SIC). Their only contention is that the provision of Section 11AB are applicable with effect from 28.9.1996 i.e. when the said section came into force and as such quantification of interest for the entire period was not justified. This view is not being accepted by the Original adjudicating authority on the ground that the adjudication has taken place after 28.8.1996 & as such, he has quantified the interest for the entire period. However, I find that the issue is no more res integra and the Hon'ble Supreme Court in the case of Markandy Prasad has approved the decision of the Tribunal by rejecting the Revenue's appeal. I also take note of the latest decision of the Hon'ble High Court of Jharkhand at Ranchi in the case of CCE v. TELCO reported in 2004 (165) E.L.T.280 (Jhar.) whereby taking note of the Hon'ble Supreme Court decision in the case of Commissioner v. Elgi Equipment Ltd. - 2001 (128) E.L.T.52 (S.C.) the High Court has refused to refer a question of law. Note may be taken of another Karnataka High Court decision in the case of CCE v. Supra Foundry Services (P) Ltd. reported in 2001 (132) E.L.T. 543 (Karnataka) wherein it was held that Sections 11AB and 11AC are prospective in operation. As such, I am in agreement with the appellant the interest is only payable post 28.9.1996 period. The Revenue is directed to quantify the same accordingly, and refund balance amount deposited in excess by the appellant. The appeal is disposed of in above terms.