Commissioner of Central Excise Vs. Avadh Alloys Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-27-2004

Reported in : (2004)(173)ELT34TriDel

Judge : P Bajaj

Appellant : Commissioner of Central Excise

Respondent : Avadh Alloys Pvt. Ltd.

Judgement :

1. In this appeal which has been filed by the Revenue against the impugned order-in-appeal, the issue relates to the date from which the interest on the service tax amount is payable by the respondents.

2. The learned JDR has contended that since the amendment in the service lax for validating the provisions of Sub-clauses (xii) and (xvii) of Clause (d) of Sub-rule (1) of Rule 2 of the Service Tax Rules was given retrospective effect by the Legislature as is evident from Section 117 of the Finance Act, 2000. Interest on the service tax amount became payable by the respondents from the date on which the service tax became payable by the respondents. But in my view, this contention of the learned JDR cannot be accepted in view of Clause (ii) of Section 117 of the Finance Act which clearly enacts that any service tax refunded in pursuance of any judgment, decree or order of any court striking down Sub-clauses (xii) and (xvii) of Clause (d) of Sub-rule (1) of Rule 2 of Service Tax Rules, 1994 before the date on which the Finance Act, 2000 receives the assent of the

President shall be recoverable within a period of thirty days from the date on which the Finance Act, 2000 receives the assent of the President, and in the event of non-payment of such service tax refunded within this period, in addition to the amount of service tax recoverable, interest at the rate of twenty-four per cent per annum shall be payable, from the date immediately after the expiry of the said period of thirty days, till the date of payment.

3. From the bare perusal of the above said clause, it is quite evident that interest could be claimed from the assessee if he failed to pay service tax within 30 days from the date on which the Finance Act, 2000 received the assent of the President, at the rate of 24% per annum. In the instant case, the respondents are transporters and their tax liability was set aside by the Apex Court in the case of Laghu Udyog Bharati v. Union of India reported in 1999 (112) E.L.T. 365 by striking down the Sub-clauses (xii) and (xvii) of Sub-rule (1) of Rule 2 of the Service Tax Rules. These clauses were again revalidated by making amendment in the Service Tax Rules with retrospective effect, but the service tax was to be paid by an assessee thereafter within 30 days from the date of the receipt of the assent of the President, to the amendment contained in Section 117 of the Finance Act. In the event of failure to pay service tax within that stipulated period of 30 days, interest could be claimed by the department from the assessee but not earlier to that. The President's assent was received on 12-5-2000 as even conceded by the department in the grounds of appeal. Therefore, in the event of failure to pay service tax within 30 days from that date, the respondents became liable to pay interest. They paid service tax on 28-9-2000 whereas it was payable by them on or before 11-6-2000.

Therefore, the interest is chargeable from them from 12-6-2000 till the date of payment. The Commissioner (Appeals) has, therefore, rightly modified the order-in-original and allowed interest to the department from 12-6-2000. Therefore, I do not find any illegality in the impugned order of the Com missioner (Appeals) and the same is upheld.