

Sun Pharmaceuticals Industries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-24-2005

Reported in : (2005)(102)ECC349

Judge : S Kang, Vice, N T C.N.B., P Bajaj

Appellant : Sun Pharmaceuticals Industries

Respondent : Cce

Judgement :

1. The issue referred to the Larger Bench is as to whether interest on delayed payment of interest is permissible under the provisions of Central Excise Act or not. This reference has arisen on account of the apex court judgment in CE Hyderabad v. ITC Ltd. reported in 2005 (179) ELT 15 and by the Tribunal in the case of Hindustan Motors v. CCE, Calcutta reported in 2003 (56) RLT 192. None has come present on behalf of the appellants before us. However, the Id. counsel has assisted the Bench. We have heard the Id. SDR and the counsel.

2. In CE Hyderabad v. ITC Ltd. (supra), there was delayed refund of pre-deposit and interest at the rate more than 12% was allowed by the Tribunal. The apex Court after referring and making the draft circular submitted by the Revenue regarding payment of interest, as part of the order, upheld the payment of interest to the assessee on delayed payment of pre-deposit, but reduced the interest to 12%. In that case, payment of interest on interest to the assessee was not in issue before the Apex Court and no observations in that regard had been made.

3. In Hindustan Motors Ltd. (supra), the Tribunal had no doubt allowed the interest on interest, to the assessee, but the Revenue has gone in reference before the Calcutta High Court who had admitted the same and directed the filing of statement of facts before that court. The Tribunal in that case while allowing interest on interest earned by the assessee but not paid to him, relied upon two judgments, one in Chimanlal S. Patel v. CIT 1994 (210) ITR 419 and another in CIR v.Narendra Doshi 2002(254) ITR 606 (SC). But these judgment, with due respect to the members of the Bench, had been not correctly interpreted and wrongly applied to the case governed by the provisions of Central Excise Act.

4. In Chimanlal S. Patel V. CIT (supra) the interest on interest was allowed under Section 214(1) of Income Tax Act by the Hon'ble Gujarat High Court, - Keeping in view the language of this section which permitted the payment of interest on interest in a case of delayed refund of excess advance Tax and interest due thereon. Similarly, in Narendra Doshi's case (supra), interest on interest was allowed by the Deputy CIT by relying upon the decision of Hon'ble Gujarat High Court in D.J. Works v. Deputy CIT 1992 ITR 227 which was later on followed by that High Court in Chimanlal S. Patel's case (supra) and on reference against that order of the Deputy CIT, the Hon'ble Mdhya Pradesh High Court affirmed the order. When the matter was taken to the Apex Court in civil Appeal No. 2053 of 2000, the court dismissed the same by observing that since the Revenue did not challenge the correctness two decisions of the Gujarat High Court (supra), the principle laid down therein was rightly followed and the High Court correctly answered the reference in affirmative. The Apex Court itself did not examine the merit of the issue regarding grant of interest on interest to an assessee under Section 214 of the income Tax Act or any other Act.

5. However, the view taken up by the Gujarat High Court has not been approved or endorsed by the Hon'ble Bombay High Court in the case of Sandvik Asia Ltd. v. Commissioner of Income-tax and Ors. - 2004 (IT2)-GJX-0020-BOM/1=2004(267)-ITR-0078-BOM. In that case, the Bombay High Court has ruled that for want of any express provision in the Income Tax Act, the Court has no power to award interest on interest on delayed payment of interest by the department. In the absence of specific provision in that regard in the tax statute. The authorities can

levy and collect the interest on delay in payment of tax, provided the statute provides for such obligation of the assessee under the statute and not otherwise. Similarly, the Apex Court in *India Carbon Ltd. v. State of Assam* 1997 (106) STC 460 has ruled that interest can be levied and charged on delayed payment of Tax only if the statute, that levies and changes the tax makes a substantive provision in that behalf.

6. Another full Bench of the Hon'ble Bombay High Court in *CIT v. Carona Sahu Co. Ltd.* (1984) 146 ITR 452 it has been also observed that though interest is compensatory in character, yet there is no right to receive interest other than by a right created by a statute. It is also well settled that construction of the statute only implies interpretation thereof and not interpretation therein.

7. It has not been disputed before us that Section 214 of the Income Tax Act relates to the payment of advance tax by an assessee and when the tax so paid had been found to be excess at the time of final assessment that has to be refunded by the department with interest. But no such provision regarding payment of duty in advance by the assessee, exists in the Central Excise Act. Rather duty is payable by an assessee at the time of clearance of the goods from the factory. The Central Excise Act only speaks of provisional assessment under Rule 9B which can be claimed by the assessee or adopted by the deptt., when there is dispute regarding classification of the goods, and the correct Tariff rate of duty leviable on these goods or, where the clearance of the goods has to be made by an assessee under an agreement containing price variation clause. It is only on finalisation of that provisional assessment, the excess found duty, if any, is required to be refunded to the assessee by the department and even for that refund period of three months has been allowed to the revenue under Section 11BB of the Act. However, while introducing this provision w.e.f. 28.9.96, the legislature thought it fit not to provide for any interest on interest even in case of delay in payment of interest on refund amount. To read the liability to pay interest on interest in the provision of law contained in Section 11BB of the Act, would virtually amount to legislate upon the Act and that is not the function of the Tribunal which is creation under the said Act itself and has to exercise power conferred upon it under the Act. It may also be added that before the introduction

of Section 11BB, the Tribunal had no power to award interest by exercising inherent power, on the amount of refund of duty even if paid late. In this context, reference may be made to the judgment of the Hon'ble Allahabad High Court in the case of Prestige Engineering (India) Pvt. Ltd. v. Union of India wherein it was ruled as under:- "When the Act (Central Excise) and the Rules made thereunder did not provide for payment of interest in case of refund of duty, - It is to be presumed that the Parliament advisedly did not provide for the same, while enacting Section 11B in 1978. the authorities under the Act have to operate within the four corners of the Act and the Rules made thereunder. Since the Act or the Rules did not provide for grant of interest, the authorities under the Act, including the CEGAT, had no power to award interest." 8. In the light of what has been discussed above, on the basis of the above referred two judgments of the Gujarat High Court, which are under different. Tax statute, interest on delayed payment of interest, cannot be held to be permissible under the Central Excise Act and the Rules made thereunder, for want of any specific provision in the Act or the rules. Therefore, the Tribunal has no power to award such a interest to the assessee. The law laid down in Hindustan Motors v. CCE (supra), to the contrary, being not a good law, stands overruled. The reference stands accordingly answered.

9. With the consent of both the sides, we dispose of the appeal itself as no other issue is involved therein. In view of our aforesaid answer to the reference, the appeal raising claim for interest on interest paid late, filed by the appellants, has no merit and is dismissed.

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