

**Creative Dyeing and Printing Vs. Cce**

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

**Decided On :** Aug-01-2005

**Reported in :** (2005)(103)ECC136

**Judge :** P Bajaj

**Appellant :** Creative Dyeing and Printing

**Respondent :** Cce

**Judgement :**

1. In this appeal, the appellants have contested the correctness of the part of the impugned order relating to the demand of interest from them.

2. The facts are not much in dispute. The appellants during the period in dispute opted to work under the Compound Levy Procedure from 1.5.2001. They submitted an application to avail special procedure relating to processed textile fabrics from that date by alleging that they were eligible for the said procedure as the original value of plant and machinery did not exceed Rs. 3 crores. They accordingly paid the duty under the Compound Levy Scheme, but again from 1st September reverted to the Adv. basis for having purchased a merceriser and as a result thereof, the value of their plant and machinery exceeded Rs. 3 crores. However, on verification, it revealed that they were not entitled to avail the Compound Levy facility as the value of the plant and machinery was more than Rs. 3 crores as on 1st March, 2001. They were required to pay the differential duty of Rs. 31,87,209 for the period May 2001 to August 2001 and September 2001.

They voluntarily deposited the duty.

3. The learned Counsel has contended that neither penalty could be imposed nor interest could be charged when the differential duty was paid by the appellants before the issuance of the show cause notice. He has placed reliance on the Larger Bench decision of this Tribunal in the case of CCE, Delhi-III v. Machino Montell (I) Ltd., (LB-T). He has also referred to the law laid down in the case of Warner Lambert India Ltd. v. CCE, Bangalore, 2004

(174) ELT

4. On the other hand, the learned DR, has contended that since the duty was not voluntarily paid, the interest has been rightly demanded from the appellants. He has referred to the Tribunal's decision in the case of CCE, Indore v. Deepak Spinners Ltd., . He has also contended that even interest is demandable as per the law. He has further referred to the Supreme Court decision., in the case..

1) Voltas Ltd. v. State of Andhra Pradesh, 2004 (SC3) GJX-0443-SC;

(2) Prahlad Rai and Ors. v. Sales Tax Officer, 1990 (SC2) GJX-0718-SC;(3) Commissioner of Sales Tax v. Qureshi Crucible Centre, 1993 (SC2) GJX-0222-SC;(4) M/s Haji Lal Mohd. Biri Works, Allahabad v. The State of UP and Ors., 1973 (SC2)-G}X-0186-SC; and

(5) M/s Goijal Boot House and Ors. v. State of JandK and Ors., 1984(SC2)-GJX-0010-SC.5. It is an admitted fact that differential duty had been deposited by the appellants much before the issuance of the show cause notice to them. The adjudicating authority in the order-in-original has also observed that, when on physical verification it revealed that the value of plant and machinery of the plants exceeded Rs. 3 crores for the period detailed above, the appellants voluntarily debited Rs. 14 lakhs vide PLA Entry No. 73 dated 14.3.2002 and balance of Rs. 17,87,209 was debited vide PLA Entry No. 96 dated 31st March, 2002. The case of the appellants stands squarely covered by the decision of the Larger Bench of this Tribunal in the case of CCE v. Machono Montell (I) Ltd., supra, wherein it has been observed that where the duty amount has been paid by the assessee before

the issuance of the show cause notice, neither penalty can be imposed under Section 11-AC nor interest can be demanded under Section 11-AB. This decision of the Larger Bench has been based on the Judgment of the Hon'ble Karnataka High Court in the case of CCE v. Shree Krishna Pipe Industries, . The decision of the Larger Bench was again followed by this Tribunal in the case of Warner Lambert India Ltd. v. CCE, Bangalore, supra, wherein the Bench after referring to this Larger Bench decision has also referred to the above-said decision of the Karnataka High Court as well as of the Supreme Court in the case of Warner Lambert India Ltd. v. CCE, Bangalore, 2004

(174) ELT 386 and Rashtriya Ispat Nigam Ltd. v. CCE, , in which the decision of the Tribunal regarding the penalty and interest was upheld by the Apex Court. CCE, Indore v. Deepak Spinners Ltd., , referred to by the learned DR, the Tribunal no doubt observed that the interest and penalty was imposable on the assessee involved therein, although duty was paid by him before the issuance of the show cause notice. But in that case, there was non-fulfilment of the conditions of the notification and payment of duty was not voluntary by the assessee. Keeping in view the conduct of the appellant and the facts involved therein, the Bench of the Tribunal allowed the imposition of penalty and charging of interest. But in the case in hand, as observed above, the adjudicating authority in the order-in-original has mentioned that the differential duty was voluntarily debited by the appellants and the case of the appellants stands fully covered by the ratio of the Larger Bench of this Tribunal, as detailed above. Regarding the charging of interest from an assessee the ratio of law laid down in the cases

(1) Voltas Ltd. v. State of Andhra Pradesh, 2004 (SC3) GJX-0443-SC;

(2) Prahlad Rai and Ors. v. Sales Tax Officer, Commissioner of Sales Tax v. Qureshi Crucible Centre, 1993 (SC2) GJX-0222-SC; (4) M/s. Haji Lal Mohd. Biri Works, Allahabad v. The State of UP and Ors., 1973 (SC2)-GJX-0186-SC; and

(5) M/s Goyal Boot House and Ors. v. State of J&K and Ors., 1984 - (SC2)-GJX-0010-SC, referred to by the learned DR, is not attracted to the case in hand. All those cases were under the Sales Tax Act and none of the case was under the Central Excise Act.

Therefore, the law laid down in those cases under different statute, cannot be made applicable to a case falling under the Central Excise Act. The argument of the learned DR that the interest is payable by an assessee under the law and this aspect has neither been considered nor stands covered by the Larger Bench decision of this Tribunal and as such that decision is not applicable, is wholly misconceived. The Larger Bench has referred to the Judgment of the Karnataka High Court as well as the Apex Court and therein it has been specifically ruled that interest under Section 11-AB cannot be demanded or charged from an assessee who has paid the duty before the issuance of the show cause notice.

7. In view of the discussion made above, the demand of interest against the appellants is not sustainable and the same is set aside. The impugned order accordingly stands modified. The appeal of the appellants stands disposed of accordingly.

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