Commissioner of Central Excise Vs. K.L. Concast (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-29-2006

Reported in : (2007)(115)ECC275

Judge : R Abichandani

Appellant : Commissioner of Central Excise

Respondent : K.L. Concast (P) Ltd.

Judgement :

1. The Revenue has appealed against the order of the Commissioner (Appeals) dated 30.9.2204, by which the demand of interest is set aside. No other part of the order is challenged as made clear by the learned authorized representative for the department.

2. The respondent was engaged in the manufacture of shapes and sections of iron and steel. On 8.2.2002, the assessee intimated the debit of differential duty on sale of goods through consignment agents being the amount of Rs. 8,57,935/- for the period from 1.4.2000 to 31.3.2004 and Rs. 7,58,163/- for the period from 1.4.2001 to 31.1.2002. However, the interest accrued on these amounts was not paid. The respondent was, therefore asked to pay the amount of interest under Section 11AB alongwith the differential duty. A show cause notice came to be issued on 5.8.2003, requiring the respondent to explain as to why the differential duty should not be demanded and interest amounts on late payment should not be recovered under Section 11AB of the Central Excise Act, 1944, with a proposal to

impose penalty under Rule 25(i) of the Rules of 2002. The adjudicating authority dropped the demand of Rs. 1,47,221/- being the amount of differential duty and appropriated the same as it was already deposited. The interest amount of Rs. 2,79,766/- was, however, demanded under Section 11AB and a penalty of Rs. 5000/- was imposed under Rule 25.

3. The Appellate Commissioner observing that the assessee had voluntarily deposited the differential duty prior to the issuance of show cause notice, held that interest and penalty could not be imposed.

Reliance was placed on the decision of EID Party (India) Ltd. v. CCE, Jaipur, cases where the duty amount has been paid voluntarily before issue of show cause notice, no penalty under Section 11AC or Rule 173Q of the Rules of 1944 and no interest under Section 11AB of the Act could be levied. The Appellate Commissioner found no justification in imposing any interest or penalty on the respondent. It was also held that the show cause notice issued on 5.8.2003 for the period 2000-2001 and July 2001 to June 2002 was barred by the normal period of limitation of one year.

4. It was contended by the learned authorized representative for the department that the respondent was bound to pay interest under the amended law at least for the period from 11.5.2001 to 31.1.2002 in respect of the removals that took place during the said period making the duty payable by the respondent in respect of such removals. He submitted that the period of limitation of one year applicable for issuing show cause notices under Section 11A for duty and penalty did not apply to the notices of recovery of interest issued under Section 11AB. It was pointed out that in the show cause notice interest was specifically demanded with reference to the provisions of Section 11AB and therefore, the Commissioner (Appeals) committed an error in applying the fixed period of limitation of one year to the recovery of interest under Section 11AB.5. No one has appeared for the respondent despite service of the notice of the date of hearing.

6. Admittedly, a statement dated 8.2.2000 was filed by the respondent intimating debit of differential duty of Rs. 8,57,035/- for the period from 1.4.2000 to 31.3.2001 and Rs. 7,58,163/- for the period from 1.4.2001 to 31.1.2002, but no interest was

paid by the respondent on these amounts. Interest was payable, according to the Revenue, at the rate of 24% for which an intimation by letter dated 1.5.2002 was sent by the Superintendent to the respondent requiring the payment to be made under Section 11AB, as stated in the show cause notice. The last payment made towards differential duty amount was on 31.1.2002. Though a fixed period of limitation is prescribed in respect of recovery of duty not levied or not paid or short levied or short paid or erroneously refunded under Section 11, no such provision prescribing time limit has been made for recovery of the interest on delayed payment of duty under Section 11AB. The rate of interest is required to be fixed by the Central Government by a notification in the official gazette under Section 11AB, which at the relevant time is said to have been fixed at 24% per annum. The interest was payable from the first day of the month succeeding the month in which the duty ought to have been paid under the Act, but for the provisions of sub-section or Sub-section (2B) of Section 11A, till the date of payment of such duty.

Under explanation 2 to Sub-section (2B) of Section 11A, it was declared for removal of doubts that "interest under Section 11AB shall be payable on the amount paid by the person under this sub-section and also on the amount of short-payment of duty, if any, as may be determined by the Central Excise Officer, but for this sub-section".

Under Sub-section (2B) of Section 11 A, the person chargeable with duty could pay the amount of duty before service of notice on him under an intimation in writing to the Central Excise officer. Therefore, even in cases where duty of excise has not been levied or paid or has been short levied or short paid, the person chargeable with the duty would make such payment and as per explanation 2 to Sub-section (2B) of Section 11A, interest under Section 11AB was payable on the amount of duty paid by such person. Sub-section (2B) was inserted by Section 23 of the Finance Act, 2001 with effect from 11.5.2001. Therefore, from 11.5.2001 the liability to pay interest under Section 11AB arose even in cases where the duty was paid before the issuance of the show cause notice. In fact, where such duty was paid with an intimation in writing, there would be no need to serve any notice under Sub-section (1) of Section 11A in respect of the duty so paid, as laid in Sub-section (2B) of Section 11A of the Act. Since the liability to pay interest under Section 11AB is expressly kept intact by virtue of explanation 2 to Sub-section (2B) of Section 11A even in respect of persons who paid the duty of excise which had not been levied or paid or was short levied or short paid and no show cause notice was, therefore, required by virtue of such payment, the liability to pay interest under Section 11AB on the amount paid could be enforced. All the recoveries of sums due to the Government under the provisions of Act and the rules could be affected under Section 11. Section 11A is a specific provision for recovery of duties not levied or not paid or short levied or short or erroneously refunded and the time limit is fixed in the context of such recovery and not in the context of other recoveries which could be made under Section 11 of the Act. Therefore, the notice to pay interest under Section 11AB cannot be tested on the anvil of the period of limitation prescribed under Section 11A in the context of the show cause notice for recovery of duty etc. There is no period of limitation prescribed for effecting recovery of interest under Section 11AB, nor is there any period of limitation prescribed for exercising the power to recover the sums due to the Government under Section 11 of the Act. Therefore, the learned Commissioner (Appeals) was clearly wrong in law when he set aside the interest liability of the respondent for the period from July 2001 to June 2002, which period was governed by the amended provisions of Sub-section (2B), read with explanation 2 thereto, of Section 11A, which was brought into force with effect from 11.5.2001. Therefore, the demand of interest amount of Rs. 1,3 7,095/- for the said period from July 2001 to June 2002 is required to be confirmed and the impugned order of the Commissioner (Appeals) is set aside to that extent, and the order in original will stand restored to that extent. The appeal is accordingly allowed with no order as to costs.