Commissioner of Central Excise, Thane I Vs. Pratibha Pipes and Structural Ltd

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-13-2010

Judge : The Honourable Mr. P.G. Chacko, Member (Judicial)

Appeal No. : Appeal No. E/04 of 2009

Appellant : Commissioner of Central Excise, Thane I

Respondent : Pratibha Pipes and Structural Ltd

Advocate for Pet/Ap. : Mr N.A. Sayyad, JDR, for Appellant. Ms Purnima Laxminarayanan, Advocate, for Respondent.

Judgement :

1. After examining the records and hearing both sides, I note that the short question arising for consideration is, whether under Section 11AB of the Central Excise Act, the respondent is liable to pay interest on the differential amount of duty paid by them for the period September 03 to May 05. The said duty was paid under supplementary invoices issued after clearance of the goods. When the goods were cleared from factory, duty had been paid on the assessable value determined on the basis of the price originally agreed between the assessee and their buyers. The price subsequently came to be enhanced as per the relevant price escalation clause of the contract. Accordingly, for recovering the differential

price from the buyers and paying the differential duty on the goods, the assessee issued the above supplementary invoices. The question whether interest under Section 11AB was payable on such differential amount of duty was settled by the Hon’ble Supreme Court in the case of Commissioner vs SKF Ltd 2009-TIOL-82-SC-CX. As per the Hon’ble Supreme Court’s ruling, such interest is payable by the assessee. The prayer in this appeal of the Revenue is, therefore, liable to be granted. There is no challenge against the dropping of penalty.

2. The impugned order is set aside insofar as the decision of the lower appellate authority on the interest-related issue is concerned. This appeal is allowed, accordingly.