

Commissioner of Central Excise, Chennai Vs. Klemmen Engineering Corporation Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Apr-20-2011

Judge : The Honourable Ms. Jyoti Balasundaram, Vice-President & the Honourable Dr. Chittaranjan Satapathy, Technical Member

Appeal No. : Appeal No.E/964/2004 [Arising out of Order-in-Appeal No.53/2004 (M-II) dt. 7.4.2004 passed by t

Appellant : Commissioner of Central Excise, Chennai

Respondent : Klemmen Engineering Corporation Ltd.

Advocate for Pet/Ap. : For the Appellant: A.B. Niranjan Babu, SDR. For the Respondent: S. Venkatachalam, Advocate.

Judgement :

Per Jyoti Balasundaram

1. The adjudicating authority confirmed a demand of Rs.7,73,766/- against the appellants and also ordered recovery of interest under Section 11AB of the Central Excise Act, 1944 for the period in dispute namely March 2001 to March 2002. The assessee challenged only levy of interest and did not dispute the duty liability before the Commissioner (Appeals) who accepted the assessee's contention that since they paid duty pursuant to the adjudication order within 45 days, interest is

not leviable in the light of the language of Section 11AB which provides that in cases where duty becomes payable consequent to issue of an order, instruction or direction by the Board under Section 37B, and the amount of duty payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within 45 days from the date of issue of such order, instruction or direction, no interest shall be payable. Hence this appeal by the Revenue.

2. We have heard both sides. The contention of the Revenue is that only if the duty amount is paid within 45 days of an order, instruction or direction under the provisions of Section 37B of the Central Excise Act, 1944, the assessee can plead that they are not liable to interest but the payment, in the present case, is within the period of 45 days from the date of adjudication order and payment within 45 days of adjudication order is not covered by the proviso to Section 11AB as it stood w.e.f 11.5.2001. Ld. counsel, on the other hand, relies on the Board's circular No.655/46/2002-CX, dated 26.6.2002 wherein it has been held that proviso to

Section 11AB (1), as inserted w.e.f. 11.5.2001, makes it quite clear that duty becomes "payable" on the basis of instructions or directions of the Board also and not necessarily because of adjudication of a case, to support his contention that even payment within 45 days from the date of adjudication order will enable the assessee to escape the interest liability. However, in the light of clear language of proviso to Section 11AB, we agree with the Ld. SDR that it is only in the event of payment of duty within 45 days from the date of issue of an order, instruction or direction by the Board under Section 37B that interest liability will not arise. In the present case, payment of duty is not in terms of an order or instruction or direction issued by the Board under Section 37B and hence interest liability will arise subsequent to 11.5.2011. As regards the period prior to 11.5.2001, the assessee is not liable to interest as this is not a case where the extended period of limitation has been applied against them.

3. The appeal is thus partly allowed by holding that the assessee is liable to pay interest w.e.f. 11.5.2011.

