

Case :- CENTRAL EXCISE APPEAL No. - 115 of 2008

Petitioner :- M/S Pace Marketing Specialities

Respondent :- Commissioner Central Excise

Petitioner Counsel :- Piyush Agarwal, Dhruv Agarwal

Respondent Counsel :- K.C. Sinha, A.K. Nigam

Hon'ble Sunil Ambwani, J.

Hon'ble Pankaj Mithal, J.

We have heard Sri Bharat Ji Agrawal, Senior Advocate assisted by Sri Piyush Agrawal, learned counsel for the appellant and Sri S.P. Kesarwani appearing for the department.

This Central Excise Appeal under Section 35-G of the Central Excise Act, 1944 has come up for admission, on a question of law, namely, whether Section 11 BB of the Central Excise Act is applicable for payment of interest on the refund of Rs. 42.50 lacs which was earlier treated as pre-deposit, and for which the bank guarantee was submitted, but later, the bank guarantee was encashed when the duty was imposed. The duty was thereafter knocked off by the Income Tax Appellate Tribunal vide its order dated 10th July, 1993.

Since the department is represented and the matter involves only a question of law, we propose to decide the appeal at the admission stage.

Sri Bharat Ji Agrawal has relied upon the judgment of the Supreme Court in ***Commissioner of Central Excise, Hyderabad Vs. I.T.C., Limited 2005 (179) 15 (SC)***, in which the Supreme Court while disposing of the appeal observed:-

"The issue in this appeal and in several other appeals is whether the pre-deposit made as a pre-condition for the hearing of the appeal under the Central Excise Act, 1985 was, on the assessee being ultimately successful, refundable to the assessee with interest. The learned Solicitor General has taken instructions and has stated before this Court that the Central Board of Excise & Customs proposes to issue a circular in connection with the payment of interest on all such pre-deposits. A draft copy of the proposed circular has been handed over to this Court. Having regard to the contents of the draft circular we direct compliance with the final order impugned before us and payment of interest in terms of the draft circular. The draft circular shall be appended to

and the contents form part of this order. The appeal is disposed of. In view of this order any judgment of any High Court holding to be contrary will no longer be good law."

SLP (C) No. 11937 of 2003 (C.A. No. 7922/2004) was also decided by the same order as follows:-

"Delay condoned. Leave granted. Following the order in C.A. No. 4443/2001 the appeal is disposed of by upholding the directions for payment of interest but reducing the rate of interest from 15% p.a. to 12% p.a. The respondent has agreed to repay the difference to the appellant within a period of three months.

The Tribunal has rejected the prayer for payment of interest on the encashed bank guarantee, on the ground that Section 11 B would not apply. In case bank guarantee is furnished in the provisional assessment proceedings, the appellants are not entitle to interest under Section 11 B of the Act, being not a duty deposit in advance, but only a security furnished.

After going through the facts and circumstances of the case, we find that in this case initially the bank guarantee so furnished, was not a duty deposit in advance, but a security. After the duty was determined, the encashment of bank guarantee will amount to duty paid as the encashed bank guarantee lost its character of security. After the appeal against assessment was allowed by the appellate tribunal, the amount which was directed to be refunded and which was so refunded to the appellant, would attract interest under Section 11 BB after a period of three months from the date of receipt of the application under Sub-section 1 of Section 11 B of the Act.

This interest, in the absence of notification in ***Commissioner of Central Excise, Hyderabad (Supra)*** has been quantified as 12% p.a. We therefore dispose of the appeal with the direction that on the refunded amount, the appellant will be entitled to interest @ 12% p.m., after three months from the date of receipt of the application, under Sub-section (1) of Section 11 B, subject to conditions specified under Section 11 BB of the Central Excise Act, 1944.

Order Date :- 12.8.2011
SKS