

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.08.2014

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR  
AND  
THE HONOURABLE MR. JUSTICE G.M.AKBAR ALI

C.M.A. NO.1436 OF 2014

M/s. SL Lumax Ltd.  
G-15, SIPCOT Industrial Park  
Irrungattukkottai  
Sriperumbudur 602 105.

.. Appellant/  
Respondent

- Vs -

The Commissioner of Central Excise  
Chennai IV Commissionerate  
MHU Complex, Nandanam  
Chennai 600 035.

.. Respondent/  
Appellant

Appeal filed under Section 35 G of the Central Excise Act against the Final Order No.40500 of 2013 dated 31.10.2013 passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai, made in Appeal No.E/624/06.

For Appellant : Mr. C.Saravanan

For Respondent : Mr. P.Mahadevan

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

The assessee is the appellant herein and the appeal is filed against the Final Order No.40500 dated 31.10.2013, passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai, made in Appeal No.E/624/06.

2. The assessee in this case is involved in the manufacture of automobile parts such as light fittings and accessories and clear them on payment of excise duty to buyers based on transaction value worked out on the contracted price. Subsequently, they raise supplementary invoice after negotiation with the buyer and they secure higher price in respect of the goods cleared earlier by the assessee. Consequent to the supplementary invoice, for the differential value, excise duty is payable, and the appellant, it appears, did pay the differential duty on the amounts received from the buyer. On 8.12.05, the Deputy Commissioner of Central Excise, Division - 4, demanded interest under Section 11A (2B) read with Section 11 AB of the Central Excise Act on the differential duty paid from the date of original clearance to the customers in the said

demand order. Aggrieved over the said assessment, the assessee preferred an appeal to the Commissioner (Appeals), who decided the appeals by Order-in-Appeal No.11/2006 (M-IV) dated 31.4.06 and set aside the demand order of the Deputy Commissioner of Central Excise. In the meanwhile, the assessee had deposited the interest amount of Rs.18,15,305 vide challan No.50011 dated 23.11.11. The Department, however, preferred an appeal to the Tribunal and the Tribunal disposed of the appeal by a short order, which reads as follows :-

"4. We find that the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Pune - Vs - SKF India Ltd., reported in 2009 (239) ELT 385 (SC) held that payment of differential duty at a later date is clearly a case of short-payment of duty at the time of clearance and, therefore, interest is payable under Section 11 AB of Central Excise Act, 1944. The Hon'ble Supreme Court restored the order passed by the Assistant Commissioner insofar as charge of interest and also observed that there is no question of imposition of penalty.

5. Respectfully following the decision of the Hon'ble Supreme Court, in all these appeals, we uphold the demand of interest and penalties are set aside. All the appeals filed by the assessee and department are disposed of in the above terms."

Primarily, the Tribunal acted upon the decision of the Supreme Court in the case of Commissioner of Central Excise, Pune - Vs - SKF India Ltd. (2009 (239) ELT 385 (SC)).

3. Heard Mr.C.Saravanan, learned counsel appearing for the appellant and Mr.P.Mahadevan, learned standing counsel appearing for the respondent.

4. Learned counsel appearing for the appellant tried to convince this Court that the decision rendered by the Supreme Court in SKF's case (supra) is a case relating to suppression of fact and, therefore, submitted that the claim is time barred and the said facts are not applicable to the present case on hand. However, we find that this plea of the learned counsel for the appellant is not substantiated by fact as in SKF's case (supra), we find that the facts are very distinct and clear and they are identical to the facts of the present case, the material portion of which is extracted hereunder :-

"2. The facts of the case are fairly simple and admitted by both sides. The respondent-assessee is engaged in the manufacture and sale of ball-bearings and textile machine parts. It sold goods manufactured by it on certain prices on payment of excise duty leviable on the price on which the goods were sold. Later on, there was a revision of prices with retrospective effect. Following the revision the

assessee demanded from its customers the balance of the higher prices and issued to them supplementary invoices. At the same time it also paid the differential duty on the goods sold earlier. The Revenue took the view that the assessee was liable to pay interest on differential duty. The assessee was given a notice dated April 4, 2006 demanding Rs.95,590/- as interest on delayed payment of duty under section 11AB of the Central Excise Act and further asking it to show cause why penalty may also not be imposed on it under section 37(3) of the Act. The assessee gave its reply stating that the payment of differential duty was made by it at the time of issuing supplementary invoices to the customers and, therefore, there was no question of charging interest much less any penalty. However, the Assistant Commissioner Central Excise, Pune II Division, confirmed the demand of interest by his order dated June 5, 2006 and further imposed a penalty of Rs.5,000/- against the assessee. The assessee took the matter in appeal before the Commissioner (Appeals) Central Excise, Pune I, who by his order dated August 30, 2006 allowed the appeal and set-aside the order of the Assistant Commissioner. The Revenue then brought the matter before the Customs, Excise and Service Tax Appellate Tribunal but its appeal was dismissed by order dated January 3, 2008. The Tribunal, following certain decisions of the Bombay High Court held that no interest was chargeable where there was no time-gap between the payment of the differential duty and issuance of supplementary invoices to the customers on the basis of upward revision of prices in respect of the goods sold earlier."

5. It could be seen that in SKF's case (supra), the Supreme Court, relying upon the decision in Rajasthan Spinning & Weaving Mills case (2009 (238) ELT 3 (SC)), clearly held that in the scheme of the four sections (11A, 11AA, 11AB & 11 AC) interest is leviable on delayed and deferred payment of duty for whatever reasons. In fine, the Supreme Court clearly held that payment of differential duty clearly came under sub-section (2B) of Section 11-A and attracts levy of interest under Section 11 AB of the Act. The relevant portion of the order of the Supreme Court in SKF's case (supra) is extracted hereinbelow for easy reference :-

"14. We are unable to subscribe to the view taken by the High Court. It is to be noted that the assessee was able to demand from its customers the balance of the higher prices by virtue of retrospective revision of the prices. It, therefore, follows that at the time of sale the goods carried a higher value and those were cleared on short payment of duty. The differential duty was paid only later when the assessee issued supplementary invoices to its

customers demanding the balance amounts. Seen thus it was clearly a case of short payment of duty though indeed completely unintended and without any element of deceit etc. The payment of differential duty thus clearly came under sub-section (2B) of section 11A and attracted levy of interest under section 11AB of the Act."

6. Thus, it is clear that the facts of the present case are identical to the facts of the case before the Supreme Court in SKF's case (supra) and, therefore, this Court finds no reason to take a different view from the one taken by the Supreme Court as discussed above. Accordingly, this Court finds no error in the order passed by the Tribunal warranting interference and, no questions of law, much less substantial questions of law arise for consideration in this appeal.

7. There being no merits, this appeal is accordingly, dismissed. However, there shall be no order as to costs.

Sd/-  
Asst. Registrar(CS II)  
Dt.08/09/14

/true copy/

Sub Asst. Registrar.

GLN

To

1.The Assistant Registrar,  
Customs Excise and Service tax Appellate Tribunal  
Chennai.

2.The Commissioner of Central Excise  
Chennai IV Commissionerate  
MHU Complex, Nandanam  
Chennai 600 035.  
+1cc to Mr.P. Mahaadevan ,Advocate SR.No.40253  
BVr (CO)  
ka 12/09

C.M.A. NO. 1436 OF 2014

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