

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CEA No.14 of 2012 (O&M)
Date of decision: 31.01.2014**

M/s Faridabad Metal Udyog Pvt. Limited

.....Appellant

Vs.

Commissioner of Central Excise, Delhi IV

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MS. JUSTICE ANITA CHAUDHRY**

Present: Mr. Jagmohan Bansal, Advocate for the appellant.

Mr.Sukhdev Sharma, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the assessee under Section 35G of the Central Excise Act, 1944 (in short, "the Act") against the order dated 26.8.2011, Annexure A.5 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, (in short, "the Tribunal"). The appeal was admitted on 13.2.2013 by this court to consider the following substantial question of law:-

“Whether the show cause notice dated 28.10.2004 claiming interest for a period of more than one year is tenable in terms of Section 11A read with Section 11AB of the Central Excise Act, 1944?”

2. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The assessee company is engaged in the manufacture of LPG cylinders falling under Chapter Heading 7311 of the Schedule to Central Excise Tariff Act, 1985. On 3.12.1996, the Central Excise Preventive Staff of Delhi IV visited the factory premises of the appellant and examined the balance sheet for the years 1991-92 to 1995-96. On examination of the documents, the preventive staff found that during October 1992 to March 1996, the appellant wrongly availed Modvat credit amounting to ₹ 10,55,833/-. A show cause notice dated 29.9.1997 was issued to the appellant. The adjudicating authority vide order dated 28.4.1998 confirmed the demand of Modvat credit of ₹ 10,55,833/- and imposed equal amount of penalty under Rule 57 I(4) read with Rule 173Q (bb) of the Central Excise Rules, 1944 (in short, “the Rules”). Aggrieved by the order, the appellant filed appeal before the Commissioner(Appeals) who vide order dated 15.9.2000 upheld the order passed by the adjudicating authority and dismissed the appeal. Still not satisfied, the appellant filed appeal before the Tribunal. Vide order 25.9.2001, the Tribunal confirmed the demand but reduced the amount of penalty from ₹ 10,55,833/- to ₹ 5,00,000/-. On 28.1.2008, the respondent issued a show cause notice to the appellant raising demand of interest. The appellant filed its reply to the notice. Vide order dated 12.9.2008, Annexure A.2, the adjudicating authority confirmed the demand of interest. The appellant filed appeal before the Commissioner (Appeals). Vide order dated 24.9.2009, Annexure A.3, the appeal was dismissed. On 29.12.2009, the appellant filed appeal before the Tribunal on the ground that the demand of

interest was barred by limitation. Vide order dated 26.8.2011, Annexure A.5 impugned herein, the Tribunal dismissed the appeal. Hence the present appeal by the appellant.

3. We have heard learned counsel for the parties and perused the record.

4. Learned counsel for the appellant submits that the present appeal is squarely covered by the decision of this Court in CEA No.67 of 2011 (*Commissioner, Central Excise Commissionerate v. M/s VAE VKN Industries Pvt. Limited*), decided on 17.4.2012, wherein identical issue has been decided in favour of the assessee and against the revenue. It has been recorded therein as under:-

“6. There is no dispute that assessee has paid the differential duty on supplementary invoices regularly and has shown the same in the ER-1 returns, which were filed regularly before the department, therefore, issuance of show cause notice for interest on the delayed payment should also be within a period of one year as stipulated under section 11A of the Act. Therefore, department has absolutely no jurisdiction to issue show cause notice after expiry of the period of limitation for interest on the delayed payment for the period from 2002-03 to 2005-06. Division bench of Delhi High Court in the case of *Kwality Ice Cream Company and another v. Union of India and others*, W.P.(C) 14414-15/2006 decided on 18.1.2012 has also held that period of limitation unless otherwise stipulated by the statute, which applies to a claim for the principal amount should also apply to the claim for interest thereon.

7. We find no illegality or jurisdictional error in the order passed by the learned Tribunal, therefore appeal is devoid of merit. Hence is dismissed.”

Learned counsel for the respondent is unable to dispute the applicability of the said judgment.

5. In view of the above, the substantial question of law is answered in favour of the assessee and against the revenue. The appeal stands allowed.

(Ajay Kumar Mittal)
Judge

January 31, 2014
'gs'

(Anita Chaudhry)
Judge