

Bombay High Court Commissioner Of Central Excise-I vs Gaurav Mercantiles Ltd. on 18 August, 2005 Equivalent citations: 2005 (190) ELT 11 Bom Bench: V Daga, J Devadhar ORDER 1. Heard rival parties. 2. Perused appeal. 3. The substantial questions of law sought to be raised are as under : (1) Whether the Tribunal is correct in interpreting Section 11A of Central Excise Act while holding that Duty demand on 19-4-2004, was not required to be made due to insertion of Section 2B to Section 11A on 11-5-2001 and that invoking the penalty clause of Section 11AC is not called for? (2) Whether Sub-section (2B) of Section 11A is applicable considering the fact that the assessee indulged in clandestine removal. When the Show Cause Notice contains detailed narration of events apparently leading to the conclusion of intention to evade payment of duty, whether mere non-invocation of specific section/provision to Section 11A will vitiate the show cause notice for purpose of imposition of penalty under Section 11AC of Central Excise Act, 1944? 4. Factual matrix reveals that the show cause notice was issued on 19-4-2002 whereas entire amount of duty and penalty was paid on 31-1-2001 and 1-9-2001. It is thus clear that the entire duty liability was paid prior to the issuance of show cause notice. 5. Learned Counsel appearing for the respondent-assessee tried to support the order of the Tribunal on the basis of two judgments; one of the Madras High Court in the case of CCE, Madras v. Jkon Engineering (P) Ltd., 2005 (67) RLT 157 (Mad.) and another from the Karnataka High Court in the case of Commissioner of C. Ex., Mangalore v. Shree Krishna Pipe Industries, , wherein both the Courts have taken a view that where duty or penalty imposed has been deposited before issuance of show cause notice under Section 11AC of the Central Excise Act, 1944, no action under Section 11AC of the Central Excise Act should be initiated or taken. 6. It is also brought to our notice that a view similar to above view had also been taken by the Tribunal at Bangalore in the case of Rashtriya Ispat Nigam Ltd. v. Commissioner of Central Excise, Vishakhapatnam, . The above view taken by the Tribunal at Bangalore was a subject matter of appeal before the Apex Court. Appeal has been dismissed by the Apex Court [see 2004 (163) E.L.T. A53]. In this view of the matter, it can safely be concluded that the view taken by the Tribunal was accepted by the Apex Court. 7. In the above circumstances, no substantial question of law is involved in this appeal. Appeal is thus dismissed for want of substantial question of law. 8. In view of this order, learned Counsel for the respondent does not pressed cross-objection filed by the respondent-assessee. Cross-objection is accordingly dismissed as not press with no order as to costs.