**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD**

Dated: 14/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70023/2016 SM dated 11/1/2016......

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(I) of the **Central Excise and Salt Act, 1944.**

**Asstt. Registrar**

| Application | Appeal | Name and Address of Appellant |
|---|---|---|
| | E/2251/2006 | CCE, KANPUR<br>117/7,SARVODAYA NAGAR<br>KANPUR(UP) |

Name and Address of Respondent: LML LTD, PANKI INDUSTRIAL ESTATE, KANPUR(UP)

Other Appellants and Respondents as per Annexure

**Copy To**

3Advocate(s) / Consultant(s

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi -- 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

**Asstt. Registrar**
**Regional Bench, Allahabad**

## IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

### Ex. Appeal No.2251/06

Arising out of O/A No.160-CE/APPL/KNP/06 dated 27.04.2006 passed by Commr. (Appeals) of Customs & Central Excise, Kanpur.

**For approval and signature:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**
**HON'BLE MR. H. K. THAKUR, MEMBER (TECHNICAL)**

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|---|---|---|
| 1. | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | : No |
| 2. | Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : Yes |
| 3. | Whether His Lordship wishes to see the fair copy of the Order? | : Seen |
| 4. | Whether Order is to be circulated to the Departmental Authorities? | : Yes |

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Commr. of Central Excise, Kanpur ...APPELLANT(S)

VERSUS

M/s LML Ltd. RESPONDENT (S)

APPEARANCE

Shri M. K. Mall, Joint.Commr. (D.R.) for the Department
None for the Respondent (s)

**CORAM:**

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. H. K. THAKUR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 11.01.2016

Final ORDER NO. 70023/2016

**Per Mr. Anil Choudhary :**

The Revenue is in appeal against the Order-in-Appeal No. 160-CE/APPL/KNP/06 dated 27.04.2006 passed by Commr. (Appeals) of Customs & Central Excise, Kanpur.

2. Brief facts of the case are that the appellant is a manufacturer of two wheeler and parts thereof. They are selling scooters through their depot in various parts of the country. During the period 04.10.1999 to 28.10.1999, Excise duty at factory gate was paid on higher price than was prevailing at the depot, hence refund application was filed on 21.06.2000, which was dismissed on the ground of limitation. The ld. Commissioner (Appeals) allowed the assessee's appeal vide an order dated 26.07.2004. The Assistant Commissioner of Central Excise sanctioned the refund, but denied the interest under Section11BB of the Act. Being aggrieved, the appellant preferred an appeal before the ld.Commissioner (Appeals), who allowed the appeal relying on CBEC's Circular No.670/61/2002-CX dated 01.10.2002, which provides interest automatically becomes payable when the refund is sanctioned after three months. Accordingly, it was directed that the assessee should be given interest in accordance with law. Being aggrieved, the Revenue is in appeal on the ground that the adjudicating authority have sanctioned the refund within three months from the date of appellate order dated 26.06.2004 and hence, there is no question of payment of interest. Accordingly, the ld.A.R. for the Revenue, prays for allowing the appeal.

3. The Respondents have filed a written submissions and prayed for decision on merits. They have also relied on the SMC Ruling in their

own case reported as 2014 (310) ELT 562. The appellants have also relied on the Larger Bench's decision in the Joyanta Glass Ltd. Vs. CCE : 2004 (165) ELT 516, wherein the Larger Bench have held that the interest under Section 11BB, in view of the explanation, contained in Section 11BB, relates back to the date of the order passed under sub-section 2 of Section 11B. Accordingly, the Tribunal directed that the interest is due to be calculated on the basis of date of application.

4. After considering the rival contentions, we uphold the order of the ld.Commissioner (Appeals) and clarifying that the interest is payable three months from the date of application filed on 21.06.2000 till the date of disbursement of refund. Accordingly, we dismiss the appeal of the Revenue. The Respondent Assessee will be entitled to consequential benefit, if any, in accordance with law.

(Pronounced in the open Court)

Sd/-
(H.K.THAKUR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
21.1.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001