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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

E/S/1444/06 IN
Appeal No. E/1861/2006

Date 05/10/2007

Assistant Registrar
C.E.S.T.A.T. New Delhi

To :
NATIONAL FERTILIZERS LTD
Udha NANGAL - 140106
(DISTT. KAPUR TH)

NATIONAL FERTILIZERS LTD

Appellant

C.C.E. LUDHIANA

Vs
Respondent

STAY ORDER NO. 994/07-EX.

I am directed to transmit herewith a certified copy of Final order No. *501/07-EX.* dated *17-9-07* passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

H o h
Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. LUDHIANA

CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult

SH. P.C. JAIN, ADV.

103, PUSHANJALI COLONY

3. S.D.R.

VIKAS MARG, EXT.

4. I.C.D.R.

N. DELHI - 92

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

H o h
Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/S/1444/06 in
E/APPEAL NO.1861/06

[Arising out of Order-in-Appeal No.01/CE/CHD/06 dt.9.1.06 passed by the Commissioner(Appeals)Chandigarh)

For approval and signature:

G.V.S.

Hon'ble Dr.T.V.SAIRAM, MEMBER TECHNICAL
 Hon'ble Mr. P.K.DAS, MEMBER JUDICIAL

- | | | |
|----|--|------------|
| 1. | Whether Press Reporters may be allowed to see: the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | <i>Yes</i> |
| 2. | Whether it would be released under Rule 27 of : the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | <i>Yes</i> |
| 3. | Whether their Lordships wish to see the fair : copy of the order? | <i>Yes</i> |
| 4. | Whether order is to be circulated to the : Department Authorities: | <i>Yes</i> |

M/s. National Fertilizers Ltd.

Appellant

Versus

C.C.E., Ludhiana

Respondent

Appearance

Sh. A.C.Jain, Adv. For Appellant

Sh. V.K.Agarwal, Authorised Departmental Representative(DR)
 For Respondent

Coram: Hon'ble Dr. T.V.SAIRAM, MEMBER TECHNICAL
 Hon'ble Mr. P.K.DAS, MEMBER JUDICIAL

Date of decision: 17.9.07

Final Order No. 501/2007EX
STAY order No. 994/2007EX

Per Dr. T.V.Sairam:

Both stay application and appeal are taken up at the instance of both the sides.

2. The appellants who is a public-sector undertaking are before us challenging the order of Commissioner(Appeals) made on 9.1.06. In this order, the Ld. Commissioner(Appeals) after discussing the background of the case has come to the conclusion that he had no jurisdiction to interfere in the matter.

3. In the appeal Memo filed before us, the appellants have stated that the whole issue stands on the objection of the Deptt. in terms of Chapter X procedure of Central Excise Rules,1944 followed by them. After discussing at length, the appeal memo states that the appellants had paid duty even prior to passing of the order-in-original and in view of this demanding interest did not arise.

4. Ld. Counsel for the appellant contends that the issue refers to whether issuance of detention order without SCN raising demand for interest and proposal for detention of the goods was as per law. In this context, it was contended that the quasi-judicial authority including Commissioner are empowered to review the action taken by the authorities below. To support his contention, he relies upon this Tribunal's order in Rinkle Floral Creations Pvt. Ltd. vs CCE, Jaipur reported in 2003(151)ELT.708(Tri.-Del.),


according to which detention order issued under Rule 230 so as to recover Government dues is an appealable order.

5. As regards that liability of interest, he would rely upon this Tribunal's order in *Birla Corpn. Ltd. vs CCE, Raipur* reported in 2002(144)ELT.674(Tri.-Del.). Para 2 of the order reads as follows:

"2. The appellants are engaged in the manufacture of excisable goods(cement) and had been availing benefit of Modvat scheme. They were issued a show cause notice for recovery of interest amounting to Rs.28.56,901/- chargeable under Rule 57-I and 57U read with Section 11AA of the Act. They contested the liability to pay interest on the ground that the orders on the basis of which the demand of interest had been raised, had either been set aside by the Tribunal in toto or the matter had been remanded to the adjudicating authority for deciding their case afresh and as such the demand of interest was premature. But the adjudicating authority did not accept their plea and confirmed the demand".

6. He also contended that it was mandatory on the part of the Department to issue SCN before confirming the interest due from the appellant. In this case, no SCN was issued by the Deptt. Only an "ordinary" letter dt.5.8.05 was sent to them. To support his contention that there was violation of principles of natural justice, the Ld. Counsel relies upon this Tribunal's order in *VBC Industries Ltd. vs CCE, Visakhapatnam* reported in 2005(190)ELT.347(Tri.-Bang.) by referring to the following paragraph:

"The short question that arises for consideration in this appeal arising from the Order-in-Appeal No.70/2003(V-1)CE dt.11.7.03 is as to whether the Department can confirm interest without issue of show cause notice. The appellants had given a Bank Guarantee for the amount. In terms of the Hon'ble A.P.High Court order dt.30.7.99 dismissing the Writ Petition filed by the appellants, the Bank Guarantee was enchased by



the Department. The Department had not issued show cause notice in terms of Section 11A of the Act for demand of interest. Simply they issued a demand letter to recover the interest on encashed Bank Guarantee amount said to be towards the erroneous refund granted to the assessee. The contention of the appellants is that interest cannot be confirmed in this manner without issue of show cause notice. In this regard, the appellants relied on the Apex Court judgment rendered in the case of Metal Forgings v. Union of India (2002(146)ELT.241=2000(8)SUPREME 316) wherein it has been held that the issue of show cause notice is a requirement to confirm the demand. As there is no issue of show cause notice in the matter, therefore demand letter directly seeking interest is not as per law. Similar view was expressed by the Apex Court in the case of U.O.I. v. Madhumillan Syntex Pvt. Ltd.(1988(35)ELT.349(SC). Therefore without going into the merits of the case, the demand letter dt.23.11.2000 of the Asstt. Commissioner asking the assessee to pay the interest on the amount towards the Bank Guarantee encashed by the Revenue is not sustainable in law. The appeal is allowed in terms of the Apex Court judgments cited above”

7. Ld. Departmental Representative admits that the order was issued for recovery of interest. According to him the date of determination relates to 1999 in this case which was vehemently opposed by the Ld. Counsel for the appellant stating that thereafter a fresh determination was made and therefore, 1999 cannot be the date of determination in the subject matter.

8. In this case, he would rely upon the Board Circular dt.6.1.97. In this circular, it has been clarified by the Board that Section 11AB is a mandatory provision for charging interest in those cases where the amount of duty has been evaded. The section also provides the period for which the interest will have to be paid and the manner in which the interest has to be computed and

therefore, interest is chargeable even if the provisions of Section 11AB are not mentioned in the adjudication order.

9. It was strongly contended by the revenue that there was no need for issuing the SCN. To support his contention, Ld. DR relies upon the ratio of the decision of the Hon'ble High Court of Judicature at Bombay in CCE vs Padmashri V.V.Patil S.S.K.Ltd. reported in 2007(215)ELT.23(Bom.). Referring to para 10 of the said judgment, Ld. DR submits that the person, who is liable to pay duty short levied/short paid/non-levied/unpaid etc. is liable to pay interest at the rate as may be determined by the Central Govt. from time to time.

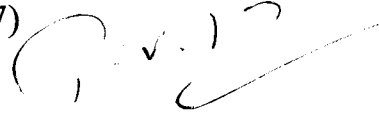
10. Having heard both sides at length and perusing the record, we find that we have to focus our attention on the correctness or otherwise of the order-in-appeal dt.9.1.06. The Ld. Commissioner, after observing that detention order dt.16.11.05(as amended) has been passed and issued by the competent authority under Section 11 of Central Excise Actt,44 in pursuance to the execution of orders-in-original passed by the Commissioner of Central Excise for the recovery of interest calculated on the amount of duty confirmed in the respective orders, has arrived at a decision that he had no jurisdiction to interfere in the matter. He has, therefore, dismissed the appeal being non-maintainable. }

11. In our opinion, the case of Rinkle Floral Creations Pvt. Ltd. (supra) in which this Tribunal has held that detention orders issued under Rule 230 are

appealable orders is not in respect of Section 11 of the Act under which the subject detention order stands issued. As, we find that Section 11A of the Act and Rule 230 of Central Excise Rules are not cast identically, the order passed by the Commissioner(Appeals) appears to us as correct in law. To arrive at this conclusion, we have relied upon this Tribunal's order in Commissioner of Customs vs Dujodwala Industries reported in 2003(153)ELT.359(Tri.-Mum). In this order, this Tribunal has categorically held that SCN is not required to be issued before initiating recovery action under Section 142 of the Customs Act. In this connection, we find that the Ld. Counsel has referred to the Hon'ble High Court of Judicature at Allahabad order passed in Ram Shree Steels(P)Ltd. vs CCE, Kanpur reported in 2000(118)ELT.580(All.) to support his contention that the detention of goods and machinery under Rule 230 of the Central Excise Rules is appealable. Further, the said order was passed in connection with Civil Misc. Writ Petition No.33 of 2000 exercising the writ jurisdiction under Article 226 of the Constitution of India. We also find that the Tribunal's order in Rinkle Floral Creations Pvt. Ltd.(supra) is based on the said Hon'ble High Court order as evident in para 4 thereof. In our view, the provisions invoked here is Section 11. which is totally different as compared to the provisions under Rule 230 of the Rules. We, therefore, do not find any inadequacy in the decision reached by the Ld. Commissioner(Appeals) in the impugned order. In view of the above

reasoning, the appeal is dismissed. The stay application filed by the appellant also stands disposed of accordingly.

(Order dictated in the open Court on 17.9.07)



(Dr.T.V.Sairam)
Member Technical



(P.K.Das)
Member Judicial

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