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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

Appeal No. E/6067/2004 - EX[DB] Date 13/07/2009

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

To :
C.C.E.CHANDIGARH
PLOT NO-19,SECTOR 17-C,CHANDIGARH
C.C.E.CHANDIGARH Appellant
Vs
M/S AVDESH TRACKS PVT.LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 457/2009-EX[DB]** dated 03-7-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S AVDESH TRACKS PVT.LTD.
VILL-JAWAHARPUR,DERABASSI DISTT.PATIALA
2. Adv. / Consult

NONE

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi

COURT-I

Date of hearing/decision:03.07.2009

Excise Appeal No. 6067 of 2004

[Arising out of order-in-appeal No. 688-89/CE/CHD/04 dated 14.10.2004 passed by the Commissioner (Appeals), Central Excise, Chandigarh].

CCE, Chandigarh — Appellant

Vs.

M/s Avdesh Tracks Pvt. Limited — Respondent

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

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

Appearance:

Appeared for the Appellant – Shri V. Chaudhary, SDR
Appeared for the Respondent – None

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

Final Oral Order No. 457/09-EX

Per Shri Justice R.M.S. Khandeparkar:

Learned DR present for the appellant – Department and none for the respondent.

2. This appeal arises from order dated 14.10.2004 passed by the Commissioner (Appeals), Chandigarh. By the impugned order, the demand for interest and the imposition of penalty has been set aside by the Commissioner (Appeals) on the ground that the duty amount was deposited prior to issuance of show cause notice. Undisputedly, there was delay in payment of duty, as the same was not paid on the day when it ought to have been paid in accordance with provisions of law.

3. The challenge to the impugned order is essentially based on the ground that the provision of law comprise under Rule 96ZO and 96ZQ of the Central Excise Rules, 1944 as they are applicable to the facts of the case in hand did not leave any discretion to the adjudicating authority in the matter of imposition of penalty or interest and moment there is delay in payment of excise duty, the authority is obliged to demand the interest and to impose the penalty.

4. Learned DR placed reliance in the decision of the Hon'ble Supreme Court in the matter of Union of India vs. Dharamendra Textile Processors reported in 2008 (231) ELT 3 (SC) in that regard.

5. The records apparently disclose that there was no dispute that there was failure on the part of the respondent in the payment of excise duty when it was required to be paid. However, the amount of duty was paid prior to issuance of the show cause notice, alongwith part of the interest thereon. Learned Commissioner (Appeals) referring to the decision of the Larger Bench in the case of CCE vs. Machino Montell reported in 2004 (62) RLT 709 of the Tribunal, held that in the facts and circumstances of the case, the payment of duty prior to the issuance of the show cause notice would not justify imposition of penalty and hence ordered that the direction for imposition of penalty and demand for interest was being set aside.

6. The provisions of law regarding the liability to pay the interest on delayed payment of duty as also obligation to pay the penalty by the assessee as well as obligation of the authority to demand interest on delayed payment of duty and to impose penalty are very clear. Further, the same has been clearly explained by the Apex Court in Dharamendra Textile Processors (supra). Being so, the law laid-down by Larger Bench in Machino Montell (supra), apart from the fact that it has been set aside by the Hon'ble Punjab & Haryana High Court, can not said to be a good law.

7. The provisions of law and the decision of the Apex Court in Dharamendra Textile Processors case being very clear on the issue involved in the matter, the impugned order cannot be sustained and is liable to set aside while restoring the order passed by the original authority. The appeal is accordingly allowed and disposed of in the above terms.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/