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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/128 /2005 - EX[DB] Date 16/07/2009

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

To :
C.C.E.NOIDA
OFFICE OF COMMISSIONER OF CUSTOMS,CENTRAL
EXCISE AND SERVICE TAX, C-56/42, SECTOR-62,
NOIDA - 201307

C.C.E.NOIDA Appellant
Vs
M/S KIRLOSKAR BATTERIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 468/2009-**EX[DB]** dated 06-7-09 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 KIRLOSKAR BATTERIES LTD.
   B-9 SITE-B,SURAJPUR INDL AREA NOIDA
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: 6.7.2009

Central Excise Appeal No.128 of 2005

Arising out of the order in appeal No.302-CE/APPL/NOIDA/04 dated 30.9.04 passed by the Commissioner (Appeals), Customs & Central Excise, Noida.

For Approval and Signature:

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

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

C.C.E., Noida .... Appellant

Vs.

M/s Kirlaskar Batteries Ltd. ..... Respondent

Appearance:

Shri Surender Shah, Authorized Departmental Representative (DR) for the Revenue and none for the respondent

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

Final Oral Order No. 468/09-EX

Per Mr. M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 302-CE/APPL/NOIDA/04 dated 30.9.04.

2. Heard the learned SDR and perused record. None appeared for the respondent.

3. There was restriction that the Cenvat earned during a particular fortnight alone can be used towards payment of duty dues for the fortnight.

It appears that during the months of November and December, 2001, the respondent defaulted in the payment of duty by the due date and paid the balance duty in instalments subsequently along with interest. Show cause notice was issued proposing payment of duty in PLA for the second fortnights for the months of November and December 2001 along with interest and proposing imposition of penalty. The original authority taking note of the fact that duty has already been paid along with interest dropped the proceedings. On appeal by the Department, the Commissioner (Appeals) held that there was no infirmity in the order of the Adjudicating authority in dropping the demand of duty. However, he imposed a penalty of Rs.2 lakhs on the party under Rule 25 for contravention of Rule 8(1) of erstwhile Rules, 2001 for having defaulted the fortnightly payments of Rs.9,35,760/-. The department is seeking confirmation of duty and penalty as proposed in the show cause notice dated 27.11.2002.

4. It is not disputed that the party has paid the entire amount of duty payable amounting to Rs.9.36,760/- along with interest though belatedly. Under these circumstances the concurrent finding of the original authority and Commissioner (Appeals) holding that no further demand of duty is justified, calls for no interference by the Tribunal. The Commissioner (Appeals) while holding that there was procedural violation has also imposed penalty of Rs.2 lakhs on the appeal by the Department. As it is a case of default in payment , which was subsequently made good along with interest, the prayer for enhancement of this penalty, in our considered opinion , not at all justified.

5. In view of the above, appeal filed by the Department is rejected.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/