

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

Appeal No. E/3721/2005-SM[BR]

Date 09/01/2008

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

To :
M/S ANANT INDUSTRIES
15-B, MOHKAMPUR INDUSTRIAL COMPLEX, DELHI
ROAD, MEERUT

M/S ANANT INDUSTRIES

THE COMMISSIONER OF CENTRAL EXCISE
MEERUT-I

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.34/2008-SM[BR] dated 29.10.2007
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
THE COMMISSIONER OF CENTRAL EXCISE
MEERUT-I
MANGAL PANDEY NAGAR, MEERUT
2. Adv. / Consult
MR. V.R.SETHI
401, SATYA CINEMA BUILDING, RANJEET NAGAR, DELHI-110008
3. S.D.R.
4. ~~J.C.D.R.~~
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


Assistant Registrar
(SM Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

**PRINCIPAL BENCH NEW DELHI
COURT NO.III**

Excise Appeal No.3721 of 2005 -SM (BR)

(Arising out of Order-in-Appeal No.149/CE/APPL/MRT-I/2005 dated 29.8.2005 passed by the Commissioner of Central Excise (Appeals), Meerut).

**DATE OF HEARING : 29.10.2007
DATE OF DECISION :29.10.2007**

For approval and signature :

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 ? :
 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ? :
 3. Whether Their Lordships wish to see the fair copy of the Order ? :
 4. Whether Order is to be circulated to the Departmental authorities ? :

Yes

M/s. Anant Industries

.....Appellants

VERSUS

CCE, Meerut

... ..Respondent

APPEARANCE

Rep. by Shri V.R. Sethi, Advocate for appellant.

Rep. by Shri S. Gautam, Authorised Departmental Representative (DR) for the respondent/Department.

CORAM : Hon'ble Mr. P.K. Das, Member (Judicial).

Final ORDER NO. :-----/Dated:29.10.2007-
34/08 JM (BR)

PER P.K. Das:

The relevant facts of the case in brief are that the appellants are engaged in the manufacture of Elastic Railway Clips falling under Ch. Heading No.73 of the Schedule to the Central Excise Tariff Act, 1985. On scrutiny of ER-I Return for the quarter ending December, 2002, it was noticed that the appellants received Price Variation Bills (P.V.B) and paid the differential duty on the basis of Price Variation Bills. It has been alleged that the appellants paid part of the amount wrongly from their Cenvat Credit Account. By show cause notice dated 9.1.2004, it was proposed demand of duty of Rs.24,607/- under Section 11A of the Central Excise Act read with Rules 8 of the Central Excise Rules along with imposition of penalty. The adjudicating authority confirmed the demand of duty and imposed penalty of equal amount along with interest. Commissioner (Appeals) upheld the adjudication order.

2. Ld. Advocate submits that Rule 8 of the Central Excise Rules, 2002 is applicable at the time of clearance of goods from the factory. In this case, the demand of duty was raised on the Price Variation Bills, which has no relevancy with payment of duty under Rule 8 of the Rules. He further submits that the Tribunal in the case of Bharat Heavy Electricals Ltd. Vs. CCE, Bangalore-III [2007 (78) RLT 281 (CESTAT-Bangalore)] held that interest is not leviable in respect of duty paid on supplementary invoice.

4. Ld. DR reiterates the findings of the Commissioner (Appeals). He submits that the appellants availed Cenvat credit and, therefore, the decision of the Tribunal is not applicable herein. He further submits that there is no dispute that at the time of clearance of the goods, the appellants have no balance in the Cenvat Account. So, they can not pay duty from Cenvat Account on Price Valuation Bills.

5. After hearing both the sides and on perusal of the records, I find that the demand of duty was raised under Rule 8 of the Central Excise Rules, 2002. Rule 8 provides manner of payment of central excise duty. Sub-rule (1) of Rule 8 provides that duty on the goods removed from the factory or the warehouse during a calendar month shall be paid by the 5th day of following month. In the present case, there is no dispute that the appellant cleared the goods following the manner of payment as provided under Rule

8 of the said Rules. Thus, on plain reading of the ^{goods} goods, it is clear that the Rule 8 is only applicable at the time of removal of the goods from the factory or the warehouse. It is seen that in present case, Price Variation Bills were raised due to Price Variation Clause after removal of the goods from the factory. So Rule 8 is not applicable in the present case. Therefore, the allegation against the appellants that they have wrongly utilized the Cenvat credit towards payment of duty against PVB is not sustainable. The Tribunal in the case of Bharat Heavy Electricals Ltd. (supra) held that the price was re-fixed and duty paid through supplementary invoices. It has been held that the appellant paid duty through supplementary invoices as per Price Variation Clause, does not call for imposition of interest. In view of the above, payment of differential duty on the strength of price variation bills, manner of payment of duty under Rule 8 is not applicable. Therefore, the impugned order is set aside and the appeal is allowed with consequential relief.

Order dictated & pronounced in open court on 29.10.2007.

(P.K. Das)
Member (Judicial)

Ckp.