

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/1160/2006-1167/2006

Date 01/02/2008

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


To :
CCE,AMRITSAR
C.R.BUILDING PLOT NO-19,SECTOR
17,CHANDIGARH.

CCE,AMRITSAR

Appellant
Vs
Respondent

M/S BIRLA VXL LTD.

I am directed to transmit herewith a certified copy of Final order No.232- 239/2008-SM[BR] dated 22.1.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

(1-8) M/S BIRLA VXL LTD.
G.T.ROAD,AMRITSAR

2. Adv. / Consult

MR.R SUDHINDER ADV.
C-179, BASEMENT DAYANAND COLONY
LAJPAT NAGAR-IV NEW DELHI-24

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)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. III

Excise Appeal Nos. 1160-1167 of 2006 – SM (BR)

[Arising out of the Order-in-Appeal No. 356-363/CE/APPL/
JAL/2005 dated 26/12/2005 passed by The Commissioner
(Appeals), Central Excise, Jalandhar.]

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 would 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 Department Authorities? :

CCE, Amritsar

Appellant

Versus

M/s Birla VXL Limited

Respondent

Appearance

Shri A.K. Rastogi, Authorized Representative (SDR)– for the appellant.

None – for the Respondent.

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

DATE OF HEARING : 22/01/2008.

Final Order No. 232-239/08 IM (BM) Dated : 22/1/08

Per. P.K. Das :-

Heard the learned DR on behalf of the revenue. None appeared on behalf of the respondent in spite of issue of notice.

2. The relevant facts of the case in brief are that the respondent filed refund claims consequent upon the orders passed by the Commissioner (Appeals) in their favour. The respondent debited the duty/penalty at their own, which were appropriated by the department. The respondent claimed payment of interest on delayed payment of the refund. The Adjudicating Authority sanctioned the refund but he has not allowed the payment of interest. The Commissioner (Appeals) allowed interest on delayed payment of refund. Commissioner (Appeals) allowed the payment of interest after three months

from the date of refund application. The revenue filed this appeal against the order of the Commissioner (Appeals). The main contention of the revenue is that the respondent deposited the amount after filing appeals and stay applications which may be treated as pre-deposit.

3. After hearing the learned DR and on perusal of the records, I find force in the submission of the learned DR. It is seen from the impugned order that the appellant while debited the duty/penalty at their own in respect of appeal No. 338/05 in other seven cases, the amounts were appropriated by the department. Thus, it is revealed from the record that the respondent deposited the amount, as pre-deposit against the pending appeals. The issue has been decided by the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Hyderabad vs. ITC Limited reported in 2005 (179) E.L.T. 15 (S.C.). The Hon'ble Supreme Court held that interest is to be paid @ 12% per annum after three months from the date of order favouring the party. In accordance with the direction of the Hon'ble Supreme Court in the said decision CBEC issued Circular No. 802/35/2004-CX dated 18/12/04 vide F. No. 387/5/2001. It has been clarified that

pre-deposit must be returned within three months from the date of order passed by the Appellate Tribunal or Courts or other Final Authority unless there is stay of the order of the Final Authority/CESTAT/Court or by a Superior Court. Therefore, the respondent is entitled for payment of interest after three months from the date of disposal of the order of the Commissioner (Appeals). The impugned order is modified accordingly. All the appeals are disposed of in the above terms.

(Dictated and pronounced in open court)

(P.K. Das)
Member (Judicial)

PK