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

Date 20/03/2008

Appeal No. E/900 /2006-SM[BR]

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

To :
CCE,BHOPAL
48,ADMINISTRATIVE AREA,ARERA
HILLS,HOSHANGABAD ROAD,BHOPAL

Appellant
Vs
Respondent

CCE,BHOPAL

M/S BIRLA ERICSON OPTICAL LTD.

I am directed to transmit herewith a certified copy of **Final order No**. 448 /2008 –SM[BR] dated 12.2.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S BIRLA ERICSON OPTICAL LTD.
   REWA (MP)
2. Adv. / Consult MS. ROHINA NATH ADV.
   C/O RESPONDENT---------

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 Publictions (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 Regis
(SM Appeal Brar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

EXCISE APPEAL NO. 900 OF 2006-SM

[Arising out of Order-in-Appeal No. 192-CE/BPL/2005 dated 23.12.2005 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President

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?	No
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

C&CE, Bhopal Appellant

Vs.

M/s. Birla Ericson Optical Ltd., Respondents

Appearance:

Ms. Archana P. Tiwari, Jt. CDR for the Revenue,
Ms. Rohina Nath, Advocate for the respondent

Coram:

Hon'ble Mr. S.S. Kang, Vice President

Date of Hearing: 12th February, 2008

FINAL ORDER NO. 448/08 SM/BR dated 12/2/08

Per S.S. Kang:

Heard both sides.

2. Revenue filed this appeal against the impugned order whereby the Commissioner (Appeals) has set aside the demand in respect of interest.

3. Brief facts of the case are that the respondents are engaged in the manufacture of jelly filled telephone cables and were clearing the same under provisional assessment order. Prices of telephone cable cleared by the respondents were subsequently enhanced and the respondents paid the differential duty before finalisation of assessment.

4. Contention of the Revenue is that as per provisions of Rule 7(4) of Central Excise Rules, 2002 the respondents are liable to pay interest from the first day of succeeding month from which such amount is determined. Case of the Revenue is that the appellants are liable to pay interest in respect of differential duty as the same has been paid after clearance of the goods.

5. Case of the respondents is that as per the provisions of Rule 7(4) of Central Excise Rules the assesses shall be liable to pay interest on any amount payable subsequent to the order of final assessment under Sub-rule (3) of Rule 7 at the rate specified by the Government from the

first day of succeeding month from which amount is determined till the date of payment. Contention is that, as the assessment was provisional and differential duty has been paid prior to finalisation of assessment, therefore, nothing ~~is~~ was due after the order in respect of final assessment was passed. Therefore, demand was rightly vacated. I find that as per Rule 7(4) of Central Excise Rules demand was rightly vacated as the amount is payable subsequent to the order of finalisation of assessment under Sub-rule (3) of Rule 7. In the present case the amount is paid prior to the finalisation of assessment ~~i.e.~~ and on finalisation of assessment nothing was due. Therefore, I find no infirmity in the impugned order. Appeal is, accordingly, dismissed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

Dated 12th February, 2008

RK