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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 01/04/2008

Appeal No. E/3784 -3786 /2006-SM[BR]

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH — Appellant

Vs

M/S JCBL LTD,UNIT I — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 540 -542 /2008 –SM[BR] dated 26.3.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent

1-2) M/S JCBL LTD,UNIT I
UNIT I, VILL- SATARPUR, DERABASSI.

[3]M/S HPL CHEMICALS LTD.
VILLAGE- BHAGWANPUR, BARWALA ROAD DERABASSI

2. Adv. / Consult SHRI. GAGAN KOHLI ADV.
394 SECTOR-30-A, CHANDIGARH

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 Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 3784-3786 of 2006-SM(BR)

(Arising out of Order-in-Appeal No. 663 & 664/CE/CHD/06 dated 31.7.06 and 702/CE/CHD/06 dated 14.8.06 passed by the Commissioner (Appeals), Central Excise, Chandigarh)

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?**	No
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?**	Yes
4.	**Whether order is to be circulated to the Departmental authorities.**	No

CCE, Chandigarh — Appellant

Vs.

1-2 M/s JCBL Ltd. — Respondent
3. M/s HPL Chemicals Ltd.

Appearance:
Shri S.L. Meena, DR - For appellant
Shri Gagan Kohli, Advocate - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 26.3.2008

Final Order No. 540-42/08-SM(BR) dated 26.3.08

Per S.S. Kang:

Heard both sides. Common issue is involved, therefore, appeals are being taken up together.

2. The Revenue filed these appeals against the order passed by the Commissioner (Appeals) whereby demand of interest and penalty was set aside. The Commissioner (Appeals) held as under :-

> "I have carefully examined the case records including the Appellants submissions made in writing and at the time of personal hearing and observe that the allegation levelled by the Adjudicating Authority is that the Appellant having supplementary invoices to their Customs on the basis of upward revision of the prices with retrospective effect to their product that were cleared earlier and paid differential duty but it has been paid subsequently to the month of removal of the goods as such they were required to pay interest under Section 11AB of the Act. Whereas the contention of the Appellant is that this appeal is not covered under Section 11AB as this section is applicable to those cases in which rates are determined at the time of delivery but excise duty has been paid subsequently. The Appellant has discharge the Central Excise duty on contract price basis and at that stage they were not aware of any amendment in purchase order for revision in price. This case is squarely covered in the case of **Motherson Sumi Systems Ltd. Vs. CCE(A) Bangalore** vide Final Order No. 875-877/2005 dated 6.8.05 has set aside the demand of interest confirmed by the Commissioner (A), Bangalore. Moreover, interest and penalty is not imposable when duty already paid before issue of show-cause notice."

3. The case of the Revenue is that the respondent paid the duty after clearance of the goods, therefore, as per

Section 11AB of Central Excise Act the respondents are liable to pay the interest. The case of the Revenue is also that Commissioner (Appeals) allowed the appeal. In view of the decision of the Tribunal in the case of **Motherson Sumi System Ltd.** and the same has not been accepted by the Revenue and appeal has been proposed to be filed.

4. The contention of the respondent is that the goods were cleared under a contract where there was price variation clause at the time of clearance of goods and duty has been paid as per the contract price whereas subsequently the prices were revised and on revision of price they immediately paid differential duty without any delay. Hence there was no short payment at the time of clearance of goods. The respondent relied upon the decision of Hon'ble Bombay High Court in the case of **CCE Vs. Rucha Engineering Pvt. Ltd**. reported in 2008 (223) ELT 161 to submit that in the similar situation Hon'ble High Court held that there is no interest chargeable under Section 11AB of Central Excise Act.

5. I find that this issue involved in this appeal is already covered by the decision of the Hon'ble Bombay High Court in the case of **Rucha Engineering** (supra). The Hon'ble High Court held as under :-

> "Learned Assistant Solicitor General Shri Sharma vehemently urged that if there is time-gap between the date on which the differential rates applicable with retrospective effect were learnt and the date on which the duty was paid, assessee would be liable to pay interest. Eventually, either on going through the order-in-original, dated 30.6.2004 passed by the Assistant Commissioner, Central Excise and Customs, Aurangabad or upon going through the text of the show cause notice-cum-demand dated 26.4.2004, a copy of which is produced for ready reference, there is nothing to indicate that there was any time-gap between the date on which the revised rates applicable with retrospective effect were learnt by the Assessee and the date on which differential duty was pad. Had that been the case, the levy of interest as under Section 11AB could have been considered because of delayed payment of duty, but this is the case wherein the Assessee upon learning that the rates of the goods cleared were revised/escalated and therefore, they are liable to pay more duty than already paid at the time of clearance of the goods, has voluntarily paid the duty. Thus, there is no delay.
>
> This is, therefore, not a case where duty of excise has not been paid or short-paid. We are, therefore, inclined to concur with the

> view taken by the Commissioner (Appeals) and the CESTAT, which calls for no interference."

6. In view of the above decision, I find no infirmity in the impugned order, the appeals are dismissed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM