TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/1756/2006-SM[BR] WITH CROSS/ 173 /2008 -SM[BR] Date 23/05/2008

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

To :
CCE,GHAZIABAD
CGO COMPLEX II KAMLA NEHRU
NAGAR,GHAZIABAD
CCE,GHAZIABAD

Appellant
Vs
Respondent

M/S VIKRANT IND

I am directed to transmit herewith a certified copy of **Final order No.** 817 /2008 -SM[BR] dated 14.5.2008

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 VIKRANT IND
   C-228,SITE I,B.S.ROAD,GHAZIABAD
2. Adv. / Consult SHRI R.S. PANDEY
   SK-102, SHASTRI NAGAR, GHAZIABAD[U.P]

3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, 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. I

Excise Appeal No. 1756 of 2006-SM with Crorss/173/2008

(Arising out of Order-in-Appeal No. 21/CE/GZB/2006 dated 27.2.2006 passed by the Commissioner (Appeals), Central Excise, Ghaziabad)

For approval and signature

HON'BLE JUSTICE S.N. JHA, 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?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities.	

CCE, Ghaziabad — Appellant

Vs.

M/s Vikrant Industries — Respondent

Appearance:
Shri S.L. Meena, DR - For appellant
Shri R.S. Pandey, Consultant - For respondent

CORAM:
HON'BLE JUSTICE S.N. JHA, PRESIDENT

Date of Hearing: 14.5.2008

Final Order No...817/08-S.M.(BR).....dated...14.5.08

Per Justice S.N. Jha :

This appeal by the Revenue involves the dispute as to imposability of penalty under Section 11AC of the

Central Excise Act or Rule 25 of the Central Excise Rules, 2002.

2. The case of the Revenue is that by reason of delayed payment of duty the respondent became liable to penalty in terms of second proviso to sub-rule (3) of Rule 8 of Central Excise Rules. Under Rule 8(3), of the Rules, as it then stood, if the assessee fails to pay duty by the due dates, he shall be liable to pay the outstanding amount along with interest @ 2% per month or Rs.1000/- per day, whichever is higher. In terms of the second proviso, till such time the payment of duty remains outstanding and interest payable thereon is not paid, it shall be deemed that the goods in question in respect of which the duty and interest are outstanding, have been cleared without payment of duty, and where duty and interest are not paid within one month from the due dates, the consequences and the penalties as provided in the rules shall follow.

2. The Commissioner (Appeals) took a view that as the respondent paid duty before the issue of show-cause notice, there appears no intention to evade payment of

duty and penalty was not imposable under Section 11AC of the Act or Rule 173Q of the erstwhile Rules corresponding to Rule 25(1) of the 2002 Rules. He also referred to Board's Circular dated 15.12.2003 in this regard.

3. Although, I am unable to endorse the view taken by the Commissioner (Appeals) that where the duty is paid before issuance of show-cause notice, penalty cannot be imposed for the reasons briefly stated in the case of **Diamond Auto Industries (Excise Appeal No. 1755 of 2006-SM)** disposed of just now, and the case of **CCE Vs. Machino Montell (I) Ltd.** – 2006 (202) ELT 398 (P&H) taking a contrary view, I am not inclined to interfere with the Commissioner's order. There is no dispute that delay of 42 days occurred in paying the duty for which the respondent has paid interest @ Rs.1000/- per day as per Rule 8(3). There is nothing on record to indicate that the respondent intended to evade payment of duty. No doubt, in terms of the second proviso to Rule 8(3), in case of delayed payment of duty, a person is liable to penalty but

it does not mean the penalty should necessarily be imposed in each case. Reference may be made on the decisions of the Supreme Court in **Hindustan Steel Ltd. Vs. State of Orissa** – 1978 (2) ELT (J159) (SC) and **State of Madhya Pradesh Vs. Bharat Heavy Electricals** - 1998 (99) ELT 33 (SC). The discretion exercised by the Commissioner (Appeals) in the facts of the case does not appear to be irrational or arbitrary to warrant interference.

4. As a result, I find no merit in this appeal, the same is accordingly dismissed.

(Dictated & pronounced in open Court)

(JUSTICE S.N. JHA)
PRESIDENT

RM