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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**

Appeal No. E/568 /2008 WITH E/ STAY /557 /2008 –SM[BR] Date 12/06/2008

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

To :
M/S MANGAL ELECTRICALS INDUSTRIES
C-61A, ROAD NO. IC,
V.K.I.AREA,
JAIPUR

M/S MANGAL ELECTRICALS INDUSTRIES Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 906 / 2008 –SM[BR]&S/ 377 /2008 dated 22.4.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent

   C.C.E. JAIPUR I

   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult

   SHRI BIPIN GARG ADV.

   B-1/1289-A, VASANT KUNJ NEW DELHI-70
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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATETRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
COURT NO.III

Excise Stay No. 557 of 2008 with Excise Appeal No. 568 of 2008-SM (BR)
[Arising out of order-in-appeal No.26[RKS]CE/JPR-I/2008 dated 11.02.2008 dated 10.11.2005 passed by the Commissioner (Appeals) Central Excise, Jaipur]

Date of Hearing: 22.04.2008

**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? | |

M/s Mangal Electricals Industries ....Appellants
Rep. by Mr. Bipin Garg, Advocate.

Vs.

CCE, Jaipur ...Respondent
Rep. by Mr. Rajmal, DR

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

Final Order No...906/08-SM/Dated: 22.4.2008
Stay order No. 377/08 - SM

**Per P.K. Das:**

After hearing both the sides and on perusal of the records, I find that the issue involved in this case is in narrow compass and, therefore, after granting stay, the appeal is taken up for disposal.

2. The instant appeal relates to demand of interest under Section 11AB of Central Excise Act, 1944 on payment of differential duty on the basis of supplementary invoice.

3. The learned Advocate submits that the Appellant paid the duty on the transaction value at the time of clearance of the goods. Subsequently, the price was escalated as per contract. Therefore, the Appellant paid the differential duty on the basis of supplementary invoice.

4. The Commissioner (Appeals) observed that in earlier order-in-appeal dated 12.9.2007, he held that no interest is leviable on supplementary invoice. But he has changed his view following the decision of the Tribunal in the case of Inducto Casts vs. CC&EC, Vadodara-I reported in 2007 (217) ELT 455 (Tri. Ahmd.) held that interest is payable on payment of differential duty on the basis of supplementary invoice. It is seen that the Hon'ble Bombay High Court in the case of CCE, Aurangabad vs. Rucha Engineering Pvt. Ltd., reported in 2008 (223) ELT 161 (Bom.) upheld the decision of the Tribunal on identical issue held in favour of the assessee. The relevant portion of the said decision is reproduced below:-

> "4. So far as facts are concerned, respondent/ Assessee are the manufacturers of motor vehicle parts falling under sub-heading No. 8708.00 of the Central Excise Tariff Act, 1985. The assessee had cleared goods as per Purchase Order placed with them by their customers M/s Bajaj Auto Limited and paid Central Excise duty accordingly. After the clearance of the goods, the Assessee had received the Amendment to the said Purchase Order for enhancement of rate with retrospective effect. The Assessee, therefore, calculated and paid the differential duty by issuing the supplementary invoice to the customer. It is the claim of the Department that on this differential duty paid in accordance with the supplementary invoice, the Assessee ought to pay interest as chargeable under Section 11AB of the Central Excise Act, 1944. The claim is based on the contentions that since the goods were cleared earlier, the entire duty was payable on the date of clearance of the goods and therefore, differential duty although paid by the Assessee voluntarily, the interest upon the same calculated to Rs. 1,37,001/- for the period September, 2002 to January 2004 is leviable and ought, to be paid by the Assessee. Section 11AB is quoted by the Assistant Commissioner in his order. It reads thus:-
>
> "Where any duty of excise has not been levied or has been short levied or short paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2) or has paid the duty under Section (2B) of Section 11A, shall, in addition to the duty, be liable to pay interest at such rate not below (ten percent) and not exceeding thirty six percent per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first date of the month succeeding the month in which the duty ought to have been paid under this Act".

It is evident that the section comes into play if the duty paid/ levied is short. Both, the Commissioner (Appeals) and the CESTAT have observed that the Assessee paid the duty on its own accord immediately when the revised rates became known to them from their customers. The differential duty was due at that time i.e. when the revised rates applicable with retrospective effect were learnt by the assessee, which was much after the clearance of the goods and therefore, question of payment of interest does not arise as the duty was paid as soon as it was learnt that it was payable. Finding that provisions of Section 11A(2) and 11A(2B) were not applicable as the situation occurred in the instant case was quite different, Section 11AB (1) was not at all applicable, and therefore, the Assessee was not required to pay interest.

5. 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 (marked "X" for identification purposes), there is nothing to indicate that there was any time-gap between the date on which the revised rates applicable with retrospectively effect were learnt by the Assessee and the date on which differential duty was paid. 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".

5. It is seen from the record that in the present case there is no allegation that the appellant delayed in payment of differential duty on implementing invoices, when revised prices were known to them. In view of the decision of the Hon'ble Bombay High Court, I find that the impugned order is not sustainable. Accordingly, the impugned order is set-aside. The appeal is allowed with consequential relief.

Order dictated & pronounced in open Court on 22.4.2008.

(P.K. DAS)
Member (Judicial)

ckp.