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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/3572/2006-SM[BR]

Date 26/06/2008

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

To :
C.C.E.KANPUR
117/7, SARVODAYA NAGAR, KANPUR.

C.C.E.KANPUR — Appellant

Vs

M/S EMA INDIA LTD — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1002 /2008 –SM[BR] dated 5.6.2008

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 EMA INDIA LTD

   C-37, PANKI INDUSTRIAL AREA, KANPUR.
2. Adv. / Consult

   -

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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH NEW DELHI

Excise Appeal No.3572 of 2006 –SM (BR)

[Arising out of Order-in-Appeal No.397-CE/APPL/KNP/2006 dated 30.08.2006 passed by the Commissioner of Central Excise (Appeals), Kanpur]

Date of Hearing/ Decision:5.6.2008

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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? :

NA.

CCE, Kanpur ...Appellants
[Rep. by Shri S.L. Meena, DR]

Vs.

M/s. EMA India Ltd. ....Respondent
[Rep.by None (request on merit)]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No.1602/08-SM(BR)/Dated:05.06.2008

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby it was directed to pay interest to the Respondent for the period from 18.4.2005 to 23.09.2005.

2. After hearing the ld. DR and on perusal of the records, I find that it is contended by the Revenue in the Grounds of Appeal that the Commissioner (Appeals) is wrong in holding that the interest is payable for delay in refund of pre-deposited amounts. It is further contended that since pre-deposit of an amount is not payment of duty, the provisions of Section 11BB cannot apply. It is seen that the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Hyderabad Vs. I.T.C. Ltd. – 2005 (179) ELT 15 (SC) held that payment of interest on delayed refund of pre-deposit would be commenced from 3 months after final disposal of the dispute between the parties.

3. In view of the decision of the Hon'ble Suprme Court in the case of I.T.C. Ltd. (supra), I find that the grounds taken by the Revenue is not sustainable.

4. At this stage, the ld. DR on behalf of the Revenue submits that the Adjudicating Authority observed that the Respondent filed the refund application on 22.2.2005, but the Commissioner (Appeals) erroneously proceeded the date of filing of the refund claim as on 17.1.2005. In support of his contention, he drew the attention of the Bench to the Respondent's letter dated 22.2.2005. I find that the Revenue has not taken this ground in their Memo of Appeal. In any event, it is revealed from the letter dated 22.2.2005 of the Respondent that they filed the refund claim by their letter dated 17.1.2005 and in continuation of the said letter, they filed a refund claim in Form-R vide letter dated 22.2.2005.

5. In view of the discussion, as above, I do not find any merit in the submissions of the ld. DR as it is a refund claim of pre-deposit. So, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 05.06.2008.

(P.K. Das)
Member (Judicial)

Ckp.