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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/2598/2006-SM[BR] Date 28/07/2008

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

To :
MICHIGAN TYRES LTD.
DISTT. SOHAGPUR, DISTT. BETUL, MP

MICHIGAN TYRES LTD. Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No 1085 /2008 –SM[BR]**. dated 30.6.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
   MR.NAVEEN MULLICK
   B-388, MERA BAGH, NEW DELHI-63.
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 APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.2598/06

(Arising out of order in appeal No.56/CE/BPL/05 dated 26.9.05 passed by the Commissioner of Central Excise (Appeals), Bhopal)

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?

No

M/s Michigan Tyres Ltd — Appellant
(Rep. by Shri Naveen Mullick, Advocate)

Vs

CCE, Bhopal — Respondent
(Rep. by Shri A.K. Rastogi, DR)

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

Date of Hearing: 30.6.08

Final Order No. 1085 /2008-SM(BR)

Per P.K. Das:

Heard both sides and perused the records.

2. The learned Advocate submits that the Appellant inadvertently took full amount of credit on the capital goods. After 3-4 months, they deposited

50% of the amount of credit already taken. The Adjudicating Authority directed the appellants to pay interest under Section 11AB of the Central Excise Act, 1944 and imposed penalty of Rs.10,000/-. The Commissioner (Appeals) upheld the Adjudication order. He submits that as evident from records, the appellants had not utilized the amount and therefore, interest and penalty are not warranted. He relied upon the following decisions of the Tribunal:-

a) CCE Rohtak Vs. Surya Vinayak Industries Pvt Ltd
2007 (215) ELT 423

Maruti Udyog Ltd Vs CCE Gurgaon
2006 (196) ELT 323

3. The learned DR submits that no evidence was placed by the appellants that the amount was not utilized by them.

4. I agree with the submission of the learned DR. So, it is required to verify the records as to whether the appellant utilized the credit. The impugned order is set aside. The matter is remanded back to the Adjudicating Authority to examine as to whether the appellants utilized credit before reversal during the relevant period and to pass order in accordance with law. The Appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*