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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 25/08/2008

Appeal No. E/3125/2006-SM[BR]

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

To :
M/S R.S.CHEMICALS
E-28,SITE-C,SURAJPUR,GREATAR NOIDA,DISTT-
G.B.NAGAR.

M/S R.S.CHEMICALS — Appellant
Vs
C.C.E.NOIDA — Respondent

I am directed to transmit herewith a certified copy of **Final order No 1164 / 2008 -SM[BR]**. dated 24.7.2008

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.NOIDA
   B-123,SECTOR 5 NOIDA.
2. Adv. / Consult
   MR.S.D.GAUR
   SB-108, SHASTRI NAGAR, GHAZIABAD.
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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. 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.3125 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.88/CE/APPL/NOIDA/06 dated 25.5.2006 passed by the Commissioner of Central Excise (Appeals), Meerut]

Date of Hearing/ Decision:24.07.2008

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? :

M/s. R.S. Chemicals ...Appellants

[Rep. by Shri S.D. Gaur, Advocate]

Vs.

CCE, Noida ...Respondent

[Rep. by Shri A.K. Rastogi, DR]

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

Final Order No.1164/2008-SM(BR)/Dated:24.07.2008

Per P.K. Das:

The relevant facts of the case, as on record, in brief, are that the Appellants are engaged in the manufacture of Industrial Thinner & Organic Composite Solvent classifiable under Heading No.38.14 of the

Schedule to the Central Excise Tariff Act, 1985. During the scrutiny of the records by the Audit Party, it was detected that the Appellants availed SSI exemption under Notification No.9/2002-CE dated 1.3.2002 during the period 2002-2003 to 2003-2004 and paid central excise duty at the normal rate and in some cases, concessional rate of duty. The Audit Party noted that the Appellants are not entitled to avail normal rate and concessional rate of duty simultaneously. The Appellant accepted the Audit objection and debited the differential duty at full rate of Rs.6,68,250/-. A show cause notice dated 24.12.2004 was issued proposing recovery of interest of Rs.1,48,686/-. The Appellant disputed the quantification of amount of interest and it was reduced to Rs.80,910/-. The Adjudicating Authority confirmed the demand of interest of Rs.80,910/-, which has been upheld by the Commissioner (Appeals).

2. The ld. Counsel on behalf of the Appellant submits that no show cause notice was issued for demanding the duty and, therefore, the demand of interest is not sustainable. He further submits that in reply to show cause notice dated 24.12.2004, they disputed the payment of duty. He also submits that without confirmation of demand of duty, payment of interest does not arise under Section 11 AB of the Central Excise Act, 1944.

3. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He drew the attention of the Bench to the

various provisions of Section 11 A (2B) and 11 AB of the Act. He submits that the Appellant had not contested the payment of duty and, therefore, they are liable to pay interest thereon.

4. After hearing both the sides and on perusal of the records, it is seen that the Appellant paid the duty on the basis of the Audit objection. On a query from the Bench, the ld. Counsel placed photocopy of the RG-23 A Part-II, wherein it was indicated that the amount was debited under protest. On perusal of the orders, it is seen that both the authorities below observed that the Appellant deposited the duty voluntarily. So, there is a dispute in the facts of the case. I find that the matter is required to be verified by the Adjudicating Authority as to whether the Appellant paid the duty under protest or voluntarily and then the demand of interest would be decided. Accordingly, the Adjudicating Authority is directed to verify as to whether the Appellant paid duty voluntarily or under protest and to decide the matter accordingly. It is made clear that if the Appellant fails to establish that the duty was paid under protest, the recovery of interest will be upheld. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 24.07.2008.

(P.K. Das)
Member (Judicial)

Ckp.