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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/160 /2007- SM[BR] Date 05/09/2008

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

To :
M/S NIPPON STEERING & SUSPENSION P LTD
SHASTRI NAGAR INDL AREA, DAULATABAD ROAD,
GURGAON.

M/S NIPPON STEERING & SUSPENSION P LTD — Appellant

Vs

C.C.E.DELHI III GURGAON — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1277 / 2008 –SM[BR] Dated 21.8.2008

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.DELHI III GURGAON
   UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ, PHASE-V, GURGAON.
2. Adv. / Consult
   MR.PAWAN KUMAR PAHWA
   MASTAN & CO. ATTORNYS & SOLICITORS, C-5/9, SAFDARJUNG DEVELOPMENT AREA, OPP. IIT GATE, NEW DELHI
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, R.K. PURAM, W.B. NO. 2, PRINCIPAL BENCH NEW DELHI, COURT NO. I

Excise Appeal No. 160 of 2007 -SM
[Arising out of Order-in-Appeal No. 307/NS/GGN/2006 dated 25.10.2006 passed by the Commissioner of Central Excise (Appeals), Gurgaon]

Date of Hearing/ decision: 21.08.2008

For approval and signature:

Hon'ble Mr. 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.	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Nippon Steering & Suspension (P) Ltd., Appellant

Vs.

CCE, Delhi-III Respondent

Appearance:

Mr. Pawan Kumar, Advocate for the Appellant
Mr. R.K. Verma, Departmental Representative for the Respondent

CORAM: Mr. Justice S.N. Jha, President

Final **ORDER** No. 1277/2008/SM

Per S.N. Jha:

Rule 8 of Central Excise Rules, 2002 deals with the manner of payment of central excise duty. The general rule is the duty on the goods removed from the factory or the warehouse during a month should be paid by the 5th day of the following month. In terms of sub-rule (3) of rule 8, if the assessee fails to pay the duty he becomes liable to pay the outstanding amount along with interest at the rate of two per cent per month or rupees one thousand per day, whichever is higher, for the period starting with the first day after due date till the date of actual payment of the outstanding amount. Where the default extends to a period of more than a month from the due date, there is a special provision contained in the second proviso to sub-rule (3). Having regard the nature of dispute involved, the same may be quoted as under:-

> "Where the default extends to a period of more than a month from the due date, the second proviso to sub-rule (3) lays down that till such time the amount of duty outstanding and the interest payable thereon are 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 such duty and interest are not paid within a period of one month from the due date, the consequences and the penalties as provided in these rules shall follow".

2. The appellant admittedly made defaults in payment of duty for the months of March, April and May 2004 and they ultimately paid duty along with interest on 28.6.2004 and 07.08.2004. There is no dispute that the default in terms of days was 89 days for the month of March, 54 days for the month of April and 63 days for the month of May. The period of default being more than a month from the due dates, second proviso to sub-rule (3) of Rule 8 became applicable rendering, by legal fiction, ("it shall be deemed that") the appellant to have evaded payment of duty and, further, making them liable to consequences and the penalties as provided in the rules, viz, Rule 25 of the Central Excise Rules.

3. The dispute in the present case relates to penalty which has been imposed on the appellant equal to interest payable on delayed payment of duty to the extent of Rs. 2,06,000/-.

4. Learned Counsel for the appellant cited decisions to contend that where duty along with interest is paid before issuance of show cause notice, penalty cannot be imposed. The decisions cited by the Counsel were rendered in the context of Section 11AC of the Central Excise Act whereas the present case is governed by rule 8(3) of the Central Excise Rules, and therefore have no application. By virtue of the second proviso thereto, having failed to pay duty within one month from due date(s), the appellant clearly made themselves liable to

consequences including imposition of penalty as provided under Rule 25. The question is whether appellant should be saddled with penalty.

5. Learned Joint CDR appearing for the Revenue drew my attention to ARE-1 forms and submitted that the appellant had made false declarations in column 4 in regard to duty payment in the relevant column. The appellant declared to have paid Rs.2,72,879/- from the current account and Rs. 1,64,673/- from credit account but factually no payment had been made during the period.

6. On behalf of the appellant reference was made to column 7 of the said returns in which after declaring "that the information given in this return is true, correct and complete in every respect" the appellant also stated that they will deposit excise duty under the current account at the earliest. It was submitted that the declaration in column 4 was a clerical mistake which should not stand against the appellant. On behalf of the Revenue it was submitted that similar mistake in the returns for three months cannot be treated as clerical mistake.

7. After considering the submissions of the parties I am of the opinion that the appellant is liable for penalty but penalty imposed is on the higher side. In the facts of the case, the amount of Rs.10,000/- would be sufficient to discharge the liability on account of penalty. I accordingly reduce the penalty from Rs.2,06,000/- to Rs. 10,000/-. Subject to this modification, the appeal is dismissed.

[Dictated and pronounced in the open Court on 21.08.2008]

(Justice S.N. Jha)
President

[Pant]