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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/2132/2006 – SM [BR] Date 25/11/2008

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

To :
CCE,LUDHIANA

CE HOUSE RISHI NAGAR LDH

CCE,LUDHIANA Appellant

Vs

M/S C.L. ENGG LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1512 / 2008- **SM[BR]** dated 18.9.2008

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 C.L. ENGG LTD

C-201,PHASE-VII,FOCAL POINT LDH
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 - 3
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). Thyagarava Road. T. Nagar.Chennai
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-1
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

Appeal No.2132 of 2006 -SM (BR)

[Arising out of Order-in-Appeal No.192/CE/CHD/06 dated 13.03.06 passed by the Commissioner of Central Excise (Appeals), Ludhiana]

Date of Hearing/ Decision:18.09.08

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.		No.
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?	:	Yes

CCE, Ludhiana ...Appellants
[Rep. by Shri S. Gautam, DR]

Vs.

M/s. C.L. Engg.Ltd. ...Respondent
[Rep. by Shri Atul Gupta, Advocate]

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

Final Order No.1512/08-SM(BR)/Dated:18.09.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Respondent failed to discharge monthly payment of duty liability for the month of

January, 2004 and February, 2004 for Rs.4,25,000/- and Rs.5,25,000/- respectively. The period of default in respect of January, 2004 is 6.2.2004 to 28.06.2004 and for February, 2004 is 6.3.2004 to 26.10.2004. Thus, there is a overlapping period of both the default from 6.3.2004 to 28.06.2004 (i.e. 115 days). The Respondent paid the interest of Rs.1,000/- per day for each default separately (i.e. Rs.2000.00 per day) in terms of Rule 8(3) of Central Excise Rules, 2002, during the overlapping period. They deposited interest Rs.2,30,000/- for overlapping period. Subsequently, they noticed that they made excess deposit and it should be Rs.1,15,000/- (i.e. 115 days x Rs.1000.00 per day). Accordingly, the Respondent filed a refund claim of Rs.1,15,000/- as excess payment of interest. The Adjudicating Authority rejected the refund claim. The Commissioner (Appeals) sanctioned the refund claim. Hence, the Revenue filed this appeal.

2. Ld. DR on behalf of the Revenue reiterates the grounds of appeal filed by the Revenue. He drew the attention of the Bench to Rule 8(3) of the Rules and submits that on going through the Rules, it is apparent that the amount of interest of Rs.1,000/- or 2% would be calculated separately for each month default. He further submits that in this case, the Respondent defaulted two times and the amount of interest will be calculated separately (i.e.Rs.2,000.00 per day for two defaults). He also

submitted that the Commissioner (Appeals) erroneously clubbed both the amounts, which is not permissible under Rule 8(3) of the Rules.

3. Ld. Advocate on behalf of the Respondent reiterates the findings of the Commissioner (Appeals). He submits that the Hon'ble Rajasthan High Court in the case of Lucid Colloids Limited Vs. Union of India reported in 2006 (200) ELT 377 (Raj.) struck down the rate of interest ofRs.1,000/- per day under Rufle 8(3) of the Rules. He also relied upon the decisions of the Tribunal in the case of Subhadra Alloys Pvt. Ltd. Vs. CCE, Trichy reported in 2008 (224) ELT 280 (Tribunal-Chennai) and in the case of Elastolan Engineers Pvt. Ltd. Vs. Commissioner of Central Excise, Kolkata-III reported in 2007 (216) ELT 297 (Tribunal-Kolkata). He also submits that Rule 8(3) of the Rules provides the amount of interest of actual payment of outstanding amount. There is no provision for charging interest for separate default.

4. After hearing both the sides and on perusal of the records, the main contention of the Revenue is as to whether in a case where the assessee fails to pay outstanding amount of duty pertaining to two different months, interest of rupees one thousand per day or two percent, whichever is higher, is to be charged on amount of outstanding duty pertaining to each month separately or by clubbing all amounts of outstanding duty pertaining to different months for which duty was not paid. I find that the Hon'ble Rajasthan High Court in the case of Lucid

Colloids Limited (supra) held that Rule 8(3) of the Rules to the extent of providing rate of interest of Rs.1,000/- per day, whichever is higher as alternative to charge of interest @2% per month is ultra vires of Section 11 AB ibid and interest of 24% per annum is chargeable. In view of the decision of the Hon'ble High Court, I find that the charging of interest @ Rs.1000.00 per day under Rule 8(3) of the Rules has no relevancy at this stage. It is seen from the order of the Commissioner (Appeals) that while calculating the payment of interest @ 2% per month, the amount or interest for the defaulting period would be payable to Rs.71,836/- for 115 days. However, the Respondent has not disputed the payment of interest of Rs.1000/- per day for 115 days of Rs.1,15,000/-, which is higher than Rs.71,836/-. In any event, the Respondent has not disputed the payment of interest for Rs.1,000/- per day for 115 days and paid the amount of Rs.1,15,000/- and, therefore, they are entitled to get the refund of Rs.1,15,000/-. So, I do not find any infirmity in the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 18.09.2008.

(P.K. Das)
Member (Judicial)

Ckp.