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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/712 /2007 – SM[BR] Date 01/12/2008

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

To :
C.C.E. ALLAHABAD

38, M.G. MARG, CIVIL LINES, ALLAHABAD

C.C.E. ALLAHABAD Appellant

Vs

M/S NIBI STEEL LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1559 / 2008- **SM[BR]** dated 25.11.2008

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 NIBI STEEL LTD.

VILLAGE & POST JAMDIH, TEHSIL-GHOSI, DISTT. MAU (U.P.)

2. Adv. / Consult SHRI L.P. ASTHANA ADV.
R-163, IIND FLOOR G.K. PART-I
NEW DELHI -110048

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). Thyagaraya 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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

Excise Appeal No. 712 of 2007-SM

(Arising out of Order-in-Appeal No. 145-CE/ALLD/2006 dated 22.12.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Allahabad).

DATE OF HEARING : 25.11.2008
DATE OF DECISION : 25.11.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MS. JYOTI BALASUNDARAM, VICE-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 ?	No
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

CCE, Allahabad .... **Appellant**
(Rep by Sh. S.K. Panda, DR)

versus

M/s NIBI Steel Ltd. .... **Respondent**
(Rep. by Sh. Abhishek Jaju, Adv.)

CORAM : HON'BLE MS. JYOTI BALASUNDARAM, VICE-PRESIDENT

Final **ORDER NO.** 1559/08-SM(BR)

PER JYOTI BALASUNDARAM :

The Revenue is aggrieved by the non-levy of interest and non-imposition of penalty by the Commissioner (Appeals) on the respondents who are manufacturers of Rectified Spirit, Ordinary Denatured Spirit, and Special Denatured Spirit (all three are different varieties of Ethyl Alcohol) and took cenvat credit on the quantities, but subsequently reversed the same and admitted that they were liable to reverse the credit.

2. I have heard both sides. The provision for levy of interest under Section 11-AB and imposition of penalty under Section 11-AC arises in case where the extended period of limitation is held to be attracted against the assessee. In this case, the losses of Rectified Spirit, Ordinary Denatured Spirit, and Special Denatured Spirit were never reflected by the asessees in their statutory records and, therefore, although they had subsequently reversed the credit in August, 2003, the fact remains that the losses were never disclosed to the Department during the relevant period. Therefore, the Commissioner (Appeals) has erred in holding that the assessee is not guilty of suppression of facts so as to warrant levy of interest under Section 11-AB and imposition of penalty under Section 11-AC of the Central Excise, Act, 1944. I, therefore, agree with the Revenue that this is a fit case for levy of interest and for penal

action against the respondent and, therefore, restore the order of the adjudicating authority who had levied interest and imposed penalty. The impugned order is thus set aside and the appeal allowed.

(Dictated and pronounced in the open Court on the 25th day of November, 2008)

(JYOTI BALASUNDARAM)
VICE-PRESIDENT

Golay