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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/901 /2006-SM[BR] Date 23/04/2008

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

To :
CCE,BHOPAL
48,ADMIN AREA,ARERA HILLS,HOSHANGABAD ROAD,BHOPAL

CCE,BHOPAL Appellant

Vs

M/S VINDHYA TELELINKS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 646 /2008 –SM[BR] dated 15.4.2008 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 VINDHYA TELELINKS LTD.
   REWA MP
2. Adv. / Consult MS. ROHINA NATH ADV.
   M/S RESPONDENT------------

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
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 901 of 2006

(Arising out of Order-in-Appeal No. 182-CE/BPL/2005 dated 21.12.2005 passed by the Commissioner of Central Excise (Appeals-I), Bhopal).

DATE OF HEARING : 15.04.2008
DATE OF DECISION : 15.04.2008

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

CCE, Bhopal .... **Appellant**
(Rep. by Sh. Sumit Kumar, DR)

VERSUS

M/s Vindhya Telelinks Ltd. .... **Respondent**
(Rep by Ms. Rohina Natha, Adv.)

CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT

Final ORDER NO. 646/08-SM(BR)

PER JUSTICE S.N. JHA :

This appeal by the Revenue arises from the order-in-appeal of Commissioner (Appeals) Central Excise dated 21.12.2005 modifying the order of the lower authority in the manner indicated in the appellate order.

2. Learned Commissioner decided fifteen cases of provisional assessment relating to the period September, 1999 in two categories – in the first category, thirteen cases in which there had been provisional assessment were considered, and in the second category, two cases where there was no provisional assessment were considered. The dispute in this appeal relates to first category of cases. As regards the second category of cases, the learned Commissioner held that the assessee was liable to pay interest in terms of sub-section (2B) of Section 11-AB of the Central Excise Act. It was stated by the assessee's counsel that the said part of the order, which was adverse to the assessee, stands set aside by this Tribunal. This, however, has no bearing on the dispute involved in the present appeal.

3. As indicated above, the appeal relates to 13 cases in which assessments were provisionally made in terms of Rule 7 of the Central Excise Rules, 2002. Rule 7 provides that where the

assessee is unable to determine the value of excisable goods or rate of duty applicable thereto, he may request the Assistant/Deputy Commissioner to permit him to pay the duty on provisional basis at such rate or on such value as may be specified on execution of bond to the effect that he will pay the difference between the amount of duty as may be finally assessed and the amount of duty provisionally assessed. Sub-rule (4) thereof provides for payment of interest on the amount payable to Central Government pursuant to final assessment.

4. The case of the assessee is that the liability to pay interest under sub-rule (4) of Rule 7 arises only after final assessment is made and therefore interest can be charged only for the period subsequent to the assessments. The case of the Revenue on the other hand is that in terms of Section 11-AB, interest is chargeable on the amount of duty payable by the assessee, that is, when the duty became due. Dealing with the issue, the Commissioner (Appeals) held as follows :-

> **"…….interest is liable to be paid from the month following the month in which assessments were finalized. Since the appellants have paid the duty in 13 cases much before the finalization of the assessments thus no interest is liable to be paid. In view of this, I hold that interest amounting to Rs.2,22,869/- is liable to be paid by the appellants."**

5. The above finding is out and out in conflict with the mandate of law contained in Rule 7(4) of the Rules read with Section 11 AB of the Act. Rule 7(4) runs as follows:-

> **"The assessee shall be liable to pay interest on any amount payable to Central Government, consequent to order for final assessment under sub-rule (3), at the rate specified by the Central Government by notification issued under section 11AA or section 11AB of the Act from the first day of the month succeeding the month for which such amount is determined, till the date of payment thereof."**

From a bare reading, it is manifest that the assessee is liable to pay interest from the first day of the month succeeding the month "for which" assessment is made and the amount of duty is determined. The expression "consequent to order for final asasessment" in the rule, in my opinion, is suggestive of something which is too obvious. The liability to pay interest arises only when assessment is made but it does not mean that for the period prior to the date of assessment, interest will not be charged. At the stage of final assessment (in cases of provisional assessment) the assessee may be held entitled to refund or liable to pay the difference between the amount paid on provisional assessment and the amount finally determined as duty payable. In either case, the interest will be paid to the assessee or charged from him - as the case may be - from the first day of the month succeeding the month for which such refund or duty is determined.

This is the result of a combined reading of sub-rules (4) and (5) of Rule 7. Whether the assessee is liable to pay any differential amount or is entitled to refund can be found only when the final assessment is made. But it does not mean that interest is to be charged from the first day of the succeeding month when the amount is determined i.e, the assessment is finalized, as held by the Commissioner. The determination merely quantifies the liability. But so far as the interest liability is concerned, the rule clearly says that the interest is to be paid from the first day of the month succeeding the month "for which such determination is made". As indicated above, provisional assessment is made on the assessee's submitting a bond to the effect that he will pay the difference between the amounts of duty as may be finally assessed and the amount of duty provisionally assessed. If the assessee had paid lesser amount as duty than what he was liable to pay at the time of provisional assessment, he cannot be absolved of the liability to pay interest on the differential amount when the final assessment is made. In the case of short payment, the person is always liable to pay interest on the differential amount as if he had never paid correct duty. As is well known, interest is paid as a measure of compensation to make good the loss for the delayed payment. In this view of the matter, the impugned order of the Commissioner (Appeals) holding that the assessee is liable to pay interest following the month in which the assessments were finalized, cannot be said to be in accordance with law.

6. In the result, the aforesaid part of the order of the Commissioner (Appeals) is set aside and the matter is sent back to the original authority for quantification of the interest in accordance with law and in the light of the observations made in this order.

(Dictated and pronounced in the open Court on the 15TH day of April, 2008)

(JUSTICE S.N. JHA)
PRESIDENT

Golay