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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/1982/2006-SM[BR]   Date 22/05/2008

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

To :
M/S. TRIPATHI FIBRES & INDUS. LTD.
TIRUPATI NAGAR, ABU ROAD, (RAJ)
M/S. TRIPATHI FIBRES & INDUS. LTD.   Appellant
Vs
C.C.E. JAIPUR II   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 794/2008 –SM[BR] dated 25.4.2008

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR II
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No. 1982/06

(Arising out of order in appeal No.523/HKS/CE/JPR.II/05 dated 16.9.05 passed by the Commissioner of Central Excise (Appeals), Jaipur)

For approval and signature:

Hon'ble Mr.P.K. Das, Member(Judicial))

1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the 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?

NA

M/s Tirupati Fibres & Industries Ltd A
(Rep. by Shri Hemant Bajaj, Advocate)

Vs

CCE, Jaipur-II Respondent
(Rep. by Shri S. Gautam, DR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 25.4.08

Final Order No. 794 /2008-SM(BR)

Per P.K. Das:

Heard both sides and perused the record.

2. The appellant filed this appeal against penalty and interest. It has been alleged that there is a delay in discharging the monthly duty liability

under Rule 8(3) of Central Excise Rules, 2002. The Adjudicating Authority imposed penalty and interest. The Commissioner (Appeals) upheld the adjudication order.

3. I find that the Tribunal in the case of Condor Power Products Pvt Ltd Vs CCE Faridabad reported in 2007 (210) ELT 137 held that delay in payment of duty due to financial crisis under Rule 8 of the Central Excise Rules, penalty cannot be imposed under Rule 25 of the said Rules. It has also been held that interest is chargeable at the rate of 2% per month and not at the rate of Rs.1000/- per day. The relevant portion of the order of the Tribunal is reproduced below:-

5. Since there is no dispute over the fact that the late payment of duty was, according to the appellant, as explained by them from time to time to the Revenue authorities, due to financial crises, and that the returns were duly filed disclosing all these transactions, it would appear that the liability to pay duty was never disputed and that, subject to the liability to pay interest on the delayed payment, there was no warrant for imposing penalty under Rule 25, since it was obvious that, having disclosed the liability in their returns and pleading financial crisis as the cause of delay, there could not have been any intention to evade the payment of duty. Inference of evasion of duty cannot be drawn from mere delay in making the payment of tax in respect of the transactions already disclosed in the returns which were filed in time. Therefore, the imposition of penalty of Rs. 2,50,000/- under the impugned order cannot be sustained.

6. As regards the liability to pay interest, it is clear from the provisions of Rule 8(3) that the appellant was liable to pay interest on the delayed payment at the interest rate stipulated thereunder which was 24% at the relevant time. To the extent that Rule 8(3) of the said rules authorized imposing of interest at Rs. 1000/- per day of delay, this Tribunal has already held, in paragraph 9.3 and 110 of the judgment in *Automotive India (Raipur) Pvt. Ltd.*, v. *CCE, Raipur*, reported in 2006 (203) E.L.T. 402 (Del.) = 2006 (77) RLT 140 (CESTAT-Del.), that, the words "rupees one thousand per day, whichever is higher" occurring in Rule 8(3) were *ultra-vires* the provisions of Rule 11AB(1) of the Act and therefore, cannot be enforced. The Tribunal followed the ratio of the decision of the High Court of Rajasthan in *Lucid Colloids Ltd.* v. *Union of India*, 2006 (200) E.L.T. 377 (Raj.) rendered on 3-8-2005 in DB C.W. No. 1192/2005 by which the said phrase was struck down as being beyond the scope of the rule-making power of the Central Government. There is, therefore, no scope for the Revenue authorities to work out the interest liability at the rate of Rs. 1000/- per day and interest, as ordered, is required to be worked out on the basis of Rule 8(3) to the extent that it creates the liability to pay the outstanding amount with interest at the rate of 2% per month (i.e. 24% per annum). The impugned order of penalty is therefore set aside and the order imposing interest under Rule 8(3) is confirmed subject to the above modification. The appeal is accordingly partly allowed.

4. Respectfully following the decision of the Tribunal in the case of Condor Power Products Pvt Ltd (Supra), I set aside the penalty and direct to calculate the interest at the rate of 2% per month (i.e. 24% per annum). The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*