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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/1040/2007,1064/2007 – SM[BR] Date 02/06/2009

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 U.P.STATE SUGAR CORPN. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No 516 – 517 /2009 –SM[BR]**. dated 20.4.2009

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 U.P.STATE SUGAR CORPN. LTD.

JARWAL ROAD, DISTT. BAHARICH, (U.P.)

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A VASANT KUNJ NEW DELHI

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

M/S U.P. STATE SUGAR CORP. LTD.
JARWAL ROAD, DISTT. BAHRAICH.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeals Nos.1064 & 1040 of 2007 -SM (BR)

[Arising out of common Order-in-Appeal No.24-CE/ALLD/2007 dated 31.01.2007 passed by the Commissioner of Central Excise (Appeals), Allahabad]

Date of Hearing/ Decision:20.04.09

For approval and signature:

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

3. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.		NA
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

Excise Appeal No.E/1064 of 2007-SM (BR)

CCE, Allahabad ....Appellant
[Rep. by Shri S.K. Bhaskar, DR]

Vs.

M/s. U.P. State Sugar Corporation Ltd. ...Respondent
[Rep. by Shri Atul Gupta, Company Secretary]

Excise Appeal No.E/1040 of 2007-SM (BR)

M/s. U.P. State Sugar Corporation Ltd. ...Appellant
[Rep. by Shri Atul Gupta, Company Secretary]

Vs.

CCE, Allahabad ...Respondent
[Rep. by Shri S.K. Bhaskar, DR]

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

Final Order No. 516-517/09-SM(BR)/Dated:20.04.2009

Per P.K. Das:

Both the appeals are arising out of common order and, therefore, they are taken up together for disposal.

2. The relevant facts of the case, in brief, are that the assessee is engaged in the manufacture of V.P. Sugar and molasses classifiable under Chapter 17 of the Schedule to the Central Excise Tariff Act. The assessee defaulted in payment of central excise duty on the monthly basis on due date during the period from 6.8.2003 to 3.5.2004. under Rule 8 of the Central Excise Rules, 2002. Show cause notice was issued proposing demand of interest for delayed payment of duty. The Original Authority confirmed the amount of interest of Rs.1,09,894/- under Rule 8 of the said Rules and imposed penalty of Rs.10,000/- under Rule 25 of the said Rules. The Commissioner (Appeals) reduced the penalty to Rs.2,500/-. The assessee filed this appeal against the demand of interest and penalty. The Revenue filed this appeal against reduction of penalty by the Commissioner (Appeals).

3. Ld. Counsel on behalf of the assessee submits that the interest was calculated @ Rs.1000/- per ~~annum~~ day, which was struck down by the Hon'ble High Court in the case of Lucid Colloids Limited Vs. Union of India reported in 2006 (200) ELT 377 (Rajasthan). He further submits that the calculation of the payment of interest was done without considering the date of payment of cheque in the bank. He relied upon the decision of the

Larger Bench of the Tribunal in the case of Commissioner of Central Excise. Jaipur-I Vs. Genus Overseas Electronics Ltd. reported in 2003 (155) ELT 541 (Tribunal-LB). He further submits that there is no proposal of imposition of penalty in the show cause notice and, therefore, imposition of penalty is not warranted. He relied upon the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs, Mumbai Vs. Toyo Engineering India Limited reported in 2006 (201) ELT 513 (S.C.). He also submits that the Tribunal in the case of Condor Power Products Pvt. Limited Vs. CCE, Faridabad reported in 2007 (210) ELT 137 (Tribunal-Delhi) held that penalty is not imposable under Rule 25 of the Rules for default in payment of duty under Rule 8 of the Rules.

4. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals) and Grounds of Appeal filed by the Revenue.

5. After hearing both the sides and on perusal of the records, I find that the Tribunal in the case of Condor Power Products Private Limited (supra) held that the words, "rupees one thousand per day, whichever is higher' occurring in Rule 8(3) of the Rules ultra-vires to the provisions of Section 11 AB (1) of the Central Excise Act, 1944. It has been held that interest is payable @ 2% per month and not @ 1000/- per day. 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 it provides the 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 of the

Act. It has been held that interest of 24% per annum would be chargeable. So, the demand of interest @ of Rs.1,000/- per day is not sustainable.

6. Ld. Counsel on behalf of the assessee fairly submits that they have not produced evidences before the Commissioner (Appeals) that the date of presentation of the cheque would be taken into account for calculation of payment of duty, which is supported by the decision of the Larger Bench of the Tribunal in the case of Genus Overseas Electronics Ltd. (supra).

7. Regarding the appeal filed by the Revenue, I find that the Tribunal in the case Condor Power Products Pvt. Ltd. (supra) held that the inference of evasion of duty cannot be drawn from mere delay in making the payment of tax in respect of transactions already disclosed by filing returns in time and penalty imposed under Rule 25 of the Rules is not warranted. So, the imposition of penalty in this case is not justified. Accordingly, the penalty imposed on the assessee is set aside. The appeal filed by the Revenue is not sustainable.

8. In the appeal filed by the assessee, it is directed that the Original Authority shall calculate the amount of interest after taking into account the case of Lucid Colloids Limited (supra). He will also take into consideration the case of Larger Bench of the Tribunal in the case of Genus Overseas Electronics Ltd. (supra) for calculating the period of default.

9. The Appeal No.E/1064 of 2007-SM (BR) filed by the Revenue is rejected. Appeal No.E/1040 of 2007-SM (BR) filed by the assessee is disposed of in the above terms

Order dictated & pronounced in open court on 20.04.2009.

(P.K. Das)
Member (Judicial)

Ckp.