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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

Date 17/06/2009

Appeal No. E/3796/2006 – SM[BR]

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

To :
M/S LML LIMITED
(UNIT INDUSTRIAL ELECTRONICS) C-10, PANKI SITE
II, KANPUR.
M/S LML LIMITED — Appellant

Vs

C.C.E.KANPUR — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 584 / 2009 –SM[BR] dated 8.6.2009 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.KANPUR
   117/7, SARVODAYA NAGAR, KANPUR.
2. Adv. / Consult
   MR.R.SANTHANAM
   C-3/210, JANAK PURI, NEW DELHI - 110 058.

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)
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Assistant Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

EXCISE APPEAL NO. 3796 OF 2006-SM

[Arising out of Order-in-Appeal No. 516-CE/APPL/KNP/06 dated 19.10.2006 passed by the Commissioner (Appeals) Central Excise, Kanpur]

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 would 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?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. L.M.L. Limited — Appellant

Vs.

CCE, Kanpur — Respondent

Appearance:

Shri R. Santhanam, Advocate for the appellant;
Shri R.K. Verma, D.R. for the Revenue

Coram:

Hon'ble Mr. P.K. Das, Member (Judicial), Date of hearing/decision: 8th June, 2009

FINAL ORDER NO. 584/09-SM(BR) **dated** 8.6.09

Per P.K. Das:

Heard both sides & perused the records.

2. The issue involved in this case is, as to whether the appellants are eligible for interest on refund of pre-deposit.

3. The relevant facts of the case as per record, in brief, are that demand of duty of Rs. 2,64,837/- was confirmed vide Order-in-Original No. 11/ADC/98 dated 29th June, 1998. During pendency of the appeal, the said amount was appropriated by another Order-in-Original No. 15/REF/ACK-I/99 dated 21.9.1999. Subsequently, the Tribunal vide Final Order No. 174/05-NB(A) dated 20.1.2005 set aside the demand arising out of Order-in-Original dated 29th June, 1998. The Commissioner (Appeals) sanctioned the refund of Rs. 2,64, 837/- but, rejected the claim of interest. Hence, the appellants filed this appeal.

4. After hearing both sides and on perusal of the records, it is seen that the amount was appropriated by the Revenue during pendency of the appeal against confirmed demand which is to be treated as pre-deposit against the confirmed demand. I find that the Hon'ble Supreme Court in the case of CCE, Hyderabad vs. I.T.C. Ltd., reported in 2005 (179) ELT 15 (SC) directed the payment of interest on pre-deposit commencing upon from 3 months after the final disposal of the dispute between parties on merit. It was also held that any order or judgment of any High Court

holding to the contrary will not be no longer be good law. The Division Bench of the Tribunal in the case of L&T Ltd. vs. C.C., Ahmedabad, reported 2005 (189) ELT 179 (Tri.-Ahd.) following the decision of the Hon'ble Supreme Court in the case of ITC Ltd. (supra) held that pre-deposit of duty was required to be returned within 3 months from the date of the order of the Commissioner and the interest is required to be paid for the period beyond 3 months from the date of the order of the Commissioner. Learned Advocate submits that the decision of the Larger Bench of the Tribunal in the case of Jain Glass Ltd. vs. CCE, Calcutta, reported in 2004 (165) ELT 516 (Tri.-LB) would apply in respect of payment of interest.

5. In view of the above discussion, impugned order insofar as payment of interest is set aside. Matter is remanded back to the original authority to decide the payment of interest in the light of the above observation and Supreme Court decision and the decision of the Larger Bench of the Tribunal. Appeal is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK