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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/3885/2006 – SM[BR]   Date 21/08/2009

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

To :
C.C.E.CHANDIGARH
PLOT NO 19, SECTOR 17-C, CHANDIGARH.

C.C.E.CHANDIGARH   Appellant

Vs

M/S ALLENA AUTO INDIA (P)LTD   Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1051 / 2009 –SM[BR] dated 29.7.2009

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 ALLENA AUTO INDIA (P)LTD

   C-116, INDL-AREA, PHASE-VII, MOHALI.
2. Adv. / Consult

   NONE;------------

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
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 3885 of 2006-SM(BR)

[Arising out of Order-in-Appeal No. 860/C E/CHD/2006 dated 19.9.2006 passed by Commissioner (Appeals), Central Excise, Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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

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Commissioner of Central Excise
Chandigarh — Appellant

Vs.

M/s. Allena Auto India (P) Ltd. — Respondent

Appearance:

Mr. Iskitkhar Baig, SDR for the Appellant
None for the Respondent

Date of Hearing/decision : 29.7.2009

ORAL ORDER NO. 1051/2009 SM(BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 860/C E/CHD/2006 dated 19.9.06.

2. None appeared for the respondents. Heard the learned SDR for the respondents.

3. The respondents issued supplementary invoices to their customers on the basis of upward revision of price with retrospective effect to their product that were cleared earlier and paid differential duty. The original authority ordered recovery of interest on the differential duty with reference to due date reckoned from the original date of payments of duty on removal of the goods. Commissioner (Appeals) held that no interest is payable from the original date of clearance.

4. Learned SDR submits that the issue has been settled by the Hon'ble Supreme Court in the case of CCE, Pune vs. SKF India Ltd. reported in 2009 TIOL 82 SC-CX.

5. I have carefully considered the submissions and perused the records. The issue is no more res integra in the light of decision of the Hon'ble Supreme Court cited supra. The relevant portion of the order of the Hon'ble Supreme Court is reproduced below:-

> "14. We are unable to subscribe to the view taken by the High Court. It is to be noted that the assessee was able to demand from its customers the balance of the higher prices by virtue of retrospective revision of the prices. It, therefore, follows that at the time of sale

the goods carried a higher value and those were cleared on short payment of duty. The differential duty was paid only later when the assessee issued supplementary invoices to its customers demanding the balance amounts. Seen thus it was clearly a case of short payment of duty though indeed completely unintended and without any element of deceit etc. The payment of differential duty thus clearly came under sub-section (2B) of section 11A and attracted levy of interest under section 11AB of the Act."

6. In view of the above, the order of the Commissioner (Appeals) is set aside and order of the original authority is restored. While restoring the order of the original authority, the penalty of Rs.5,000/- imposed under Rule 27 is set aside.

7. The appeal is disposed of on the above terms.

(M. Veeraiyan)
Member(Technical)

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