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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/2148/2006 – SM[BR] Date 26/08/2009

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 SHREE KESHARIYA CONCRETE PRODUCCT P
LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1072 / 2009 –SM[BR] dated 13.8.2009

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 SHREE KESHARIYA CONCRETE PRODUCCT P LTD.

BARETH,DISTT VIDISHA (MP)

2. Adv. / Consult

MR.PRAVEEN AGGARWAL, ADV.

414 'A' SURESH NAGAR, R.K. PURI, THATIPUR, GWALIOR-474011(M.P.)

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
(SM Appeal Branch)

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

Excise Appeal No.2148 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.68-CE/BPL/2006 dated 24.03.2006 passed by the Commissioner of Central Excise (Appeals), Bhopal (M.P.)]

**Date of Hearing/ Decision:13.08.2009**

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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? : 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

CCE, Bhopal ...Appellants
(Rep. by Shri S. Gautam, SDR)

Vs.

M/s. Shree Keshariya Concrete Products Pvt. Ltd. ...Respondent
(Rep. by Shri A.Jaju, Advocate)

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

Final Order No. 1072/2009 SM(BR)/Dated:13.08.2009

**Per P.K. Das:**

Heard ld. DR on behalf of the Department and ld. Advocate on behalf of the respondent.

2. After hearing both the sides and on perusal of the records, it is seen that the Original Authority confirmed the demand of interest under Section 11 AB of the Central Excise Act, 1944. The respondent paid differential duty on the basis of supplementary invoice for escalation of price. The Commissioner (Appeals) set aside the adjudication order. The Hon'ble Supreme Court in the case of SKF India Ltd. reported in 2009 (93) RLT 237 (SC) held that interest is payable on revision of price on payment of differential duty paid on supplementary invoice. The relevant portion of the decision of the Hon'ble Supreme Court in the case of SKF India Ltd. (supra) 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 11 A and attracted levy of interest under Section 11 AB of the Act.
>
> 15. For the reasons discussed above, we set aside the judgments and orders passed by the Tribunal and the Commissioner (Appeals). We restore the order passed by the Assistant Commissioner in so far as charge of interest is concerned. On the facts of this case there is no question of imposition of any penalty. Hence, that part of the order of the Assistant Commissioner is set aside."

3. In view of the above, the impugned order of the Commissioner (Appeals) is set aside. The order of the Original Authority is restored. The appeal filed by the Revenue is allowed.

Order dictated & pronounced in open court on 13.08.2009.

( P.K. Das )
Member (Judicial)

Ckp.