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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/3883/2006 – SM[BR] Date 08/09/2009

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 SWARAJ ENGINES LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1133 / 2009 SM[BR] dated 19.8.2009 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 SWARAJ ENGINES LTD
   INDL- AREA, PHASE IX, MOHALI(PB)
2. Adv. / Consult SHRI V.LAKSMIKUMARAN ADV.
   B-6/10, SAFDARJUNG ENCLAVE 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)
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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.3883 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.854/CE/CHD/06 dated 15.09.2006 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:19.08.2009

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, Chandigarh ...Appellants
(Rep. by Shri S. Gautam, SDR)

Vs.

M/s. Swaraj Enggrs. Ltd. ....Respondents
(Rep. by Shri Ravi Raghavan, Advocate)

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

Final Order No. 1133/2009 SM (BR)/Dated:19.08.2009

Per P.K. Das:

After hearing both the sides and on perusal of the records, it is seen that the Original Authority confirmed the demand of interest of Rs.1,03,050/- under Section 11 AB of the Central Excise Act, 1944. He also imposed a penalty of equal amount under Section 11 AC of the Act.

The Commissioner (Appeals) set aside the adjudication order. It is seen that the respondent paid differential duty on the basis of supplementary invoice after clearance of the goods. The Hon'ble Supreme Court in the case of CCE, Pune Vs. M/s. SKF India Ltd. reported in 2009 TIOL 82 SC-CX held that interest is leviable on delayed payment of duty. The relevant portion of the said decision 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."

2. Hence, the order of Commissioner (Appeals) is set aside. The order of Assistant Commissioner is restored in so far as the demand of interest is upheld. Penalty is set aside. The appeal filed by the Revenue is disposed of in the above terms.

Order dictated & pronounced in open court on 19.08.2009.

(P.K. Das)
Member (Judicial)

Ckp.