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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/2138/2006-2139/2006 – SM[BR] Date 12/10/2009

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

To :
M/S GNA UDYOG LTD.
VILL & PO-BUNDALA,DISTT JALANDHAR

M/S GNA UDYOG LTD. Appellant
Vs
CCE,(HQS)CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1215 – 1216 / 2009 –SM[BR] dated 12.8.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   CCE,(HQS)CHANDIGARH
   SECTOR-17,CHANDIGARH
2. Adv. / Consult
   MR.K.K. ANAND ADV.
   A-5, BASMENT LAJPAT NAGAR –III, 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)

2. M.S GNA AZLES LTD.
   VILL & PO-MEHTIANA,DISTT,HOSHIARPUR

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

COURT – III

CENTRAL EXCISE APPEAL NO. 2138-39 OF 2006-SM

[Arising out of Order-in-Appeal No. 82/CE/JAL/2006 & 83/CE/JAL/2006 both dated 28.2.2006 passed by the Commissioner (Appeals), Central Excise, Jalandhar (Hqrs. at Chandigarh)]

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?	No
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?	No
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. GNA Udyog Ltd.,
M/s. GNA Axels Ltd. Appellants

Vs.

CCE, Jallandhar Respondent

Appearance:

Ms. Asmita Nayak, Advocate for the assessee;
Shri S. Gautam, DR for the Revenue

Coram:

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

<u>Date of hearing/decision: 12th August, 2009</u>

FINAL ORDER NO. 1215-1216/2009 **dated** SM (BR)

<u>Per P.K. Das:</u>

These appeals arise out of common order and, therefore, both are being taken up together for disposal.

2. After hearing both sides and on perusal of the records, it is seen that the original authority confirmed the demand of interest of Rs. 35,515/- under Section 11AB of Central Excise Act on payment of differential duty on the basis of supplementary invoices. I find that the Hon'ble Supreme Court in the case of CCE, Pune vs. SKF India Ltd., reported in 2009-TIOL-82-SC-CX held that interest is payable on variation of price for payment of differential 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 11A and attracted levy of interest under section 11AB of the Act.

15. For the reasons discussed above we set aside the judgments and orders passed by the Tribunal and 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 discussion both the appeals filed by the appellants are rejected.

(Operative part pronounced in the Open Court on 12.8.2009)

(P.K. DAS)
MEMBER (JUDICIAL)

RK