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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/2132/2009 – SM[BR] E/ STAY / 2204 / 2009 –SM[BR] Date 19/11/2009

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

To :
M/S ALFA AUTO INDUSTRIES PVT. LTD.
VILLAGE: MALIKPUR,
P.O.-AHMEDGARH,
DISTT. SANGRUR.

M/S ALFA AUTO INDUSTRIES PVT. LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1455/2009-SM[BR]&S/649/2009 dated 13.11.2009 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. CHANDIGARH
   C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
   MR.JAGMOHAN BANSAL
   1640/1,SECTOR-40B,CHANDIGARH

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)

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

Excise Appeal No. 2132 of 2009-SM(BR)
Excise Stay Application No. 2204 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 04/CE/Appl/CHD-II/2009 dated 30.4.09 passed by Commissioner of Central Excise (Appeals I), Chandigarh] fester

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? : Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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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M/s. Alfa Auto Industries (P) Ltd. — Appellants

Vs.

Commissioner of Central Excise Chandigarh II — Respondent

Appearance:

Shri Jagmohan Bansal, Advocate for the Appellants
Shri S.K. Bhaskar, DR for the Respondent

Date of Hearing/decision : 13.11.2009

ORAL ORDER NO. 1455/2009 SM(BR) & S-649/2009 SM(BR)

Per M. Veeraiyan:

Heard both sides.

2. Pre-deposit waived.

3. The relevant facts, in brief, are that the appellants were required to pay Rs.1,89,159/- for the month of July, 2006. They have filed the return. However, by the due date i.e. 5.8.06, they could not deposit duty due to financial crisis faced by the appellant company. They have cleared the dues on 4.12.06 by depositing Rs.1,89,159/- in PLA and also by paying Rs.13,330/- as interest. The original authority held that the failure attracted Section 11AC and imposed penalty of Rs.1,89,159/-. In this case, it was noticed that the appellant has filed the necessary returns. It is not a case of clandestine removal. There is no intention on the part of the appellant to evade the duty. It is the case of delay in payment due to unavoidable circumstances as claimed by the party. Inasmuch as the duty was not paid by the due date, the clearances are deemed to be non-duty paid clearances and hence violation of Rule 8(3A) of Central Excise Rules is established and some penalty is warranted.

4. In the facts and circumstances of the case, I hold that penalty under section 11AC is not warranted and the same is modified as penalty of Rs.5,000/- under Rule 27.

5. The appeal is disposed of in the above terms. Stay petition is also disposed of.

(M. Veeraiyan)
Member(Technical)

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