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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/1338/2009 – SM[BR] E/ STAY / 1347/2009 –SM[BR] Date 15/10/2009

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

To :
M/S HINDUSTHAN VIDYUT PRODUCTS LTD.
INDUSTRIAL AREA, BIRLA NAGAR, GWALIOR-474004.

M/S HINDUSTHAN VIDYUT PRODUCTS LTD. Appellant
Vs
C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1261 / 2009 –SM[BR]& S/581 / 2009 dated 7.8.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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
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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 Stay Application No.1347 of 2009-SM (BR) in
Appeal No.1338 of 2009-SM (BR)

[Arising out of Order-in-Appeal No.IND-1/34/2009 dated 13.02.2009 passed by the Commissioner of Central Excise (Appeals)-I, Indore]

Date of Hearing/ Decision:07.08.2009

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.		No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	
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

M/s. Hindustan Vidyut Products Ltd. ...Appellants
(Rep. by Shri Vivek Sharma, Advocate)

Vs.

CCE, Indore ...Respondent
(Rep. by Shri I.K. Bagi, SDR)

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

Final Order No. 1261/2009 SM (BR) /Dated:07.08.2009
STAY ORDER NO. 581/2009 SM (BR)

Per P.K. Das:

After hearing both the sides and on perusal of the records, it is seen that the issue involved in this case is in narrow compass and, therefore, after granting stay, the appeal is taken up for hearing for disposal.

2. The issue involved in this case relates to demand of interest under Section 11 AB of the Central Excise Act, 1944 on payment of differential duty on the basis of supplementary invoice. There is a demand of interest of Rs.2,28,802/- and penalty of Rs.2,000/-. The Hon'ble Supreme Court in the case of CCE, Pune Vs. SKF India Ltd. reported in 2009 (93) RLT 237 (SC) held that interest under Section 11 AB of the Central Excise Act, 1944 is payable on revision of prices, differential excise duty paid on supplementary invoice. The relevant portion of the decision 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 is 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 decision of the Hon'ble Supreme Court, the demand of interest is upheld. The penalty is set aside. The appeal is disposed of in the above terms. The stay application is also disposed of.

Order dictated & pronounced in open court on 7.8.2009.

(P.K. Das)
Member (Judicial)

Ckp.