

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/1780 - 1783 / 2007 -SM[BR]

Date 21/10/2009

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

To :
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)
C.R.BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH.
C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)

Appellant

Vs

Respondent

M/S GNA UDYOG LTD.

I am directed to transmit herewith a certified copy of Final order No. 1292 - 1295 / 2009 -SM[BR] dated 6.10.2009

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 GNA UDYOG LTD.
V & P.O. BUNDALA, DISTT. HOSHIARPUR

[2] M/S DCM ENGG. PRODUCTS VILL; ASRON
DISTT; NAWANSHAHAR

[3] M/S GAN DURPARTS LTD.
V&P.O. MEHTANA, DISTT; HOSHIRPUR

[4] M/S GAN AXLES LTD.
V&P.O. MEHTIANA DISTT; HOSHIARPUR

2. Adv. / Consult SHRI S.C. KAMRA ADV.
B-2/210,[BASMENT]
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 Publications 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 Puniabi 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 (Harvana)

16 Office Copy

17 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeals Nos.1780-1783 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.86/CE/Jal/2007 dated 30.03.2007, Order-in-Appeal No.126/CE/Jal/2007 dated 05.04.2007, Order-in-Appeal No.87/CE/Jal/2007 dated 30.03.2007 and Order-in-Appeal No.123/CE/Jal/2007 dated 5.4.2007 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:6.10.2009

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? | : | 12 |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : | |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | 787 |

CCE, Jalandhar

...Appellants

(Rep. by Shri V.K. Saxena, Jt. CDR)

Vs.

- 1.M/s. GNA Udyog Ltd.
- 2.M/s.DCM Engg. Products
- 3.M/s.GNA Duraparts Ltd.
- 4.M/s.GNA Axles Ltd.

....Respondents

(Rep. by Shri S.C.Kamra, Advocate and
~~Ms. Asmita Nayak, Advocate~~)

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

final Order No. 1292-1295/2009 SM (BR) Dated:06.10.2009

Per P.K. Das:

Common issue is involved in these appeals and, therefore, all are being taken up together for disposal.

2. Heard Id. SDR on behalf of the Revenue. None appears on behalf of the respondents in Appeals Nos.1780, 1782 and 1783 of 2007-SM (BR). Shri S.C. Kamra, Advocate appeared on behalf of the respondents in Appeal No.E/1781 of 2007-SM (BR).

3. In these cases, the respondents raised supplementary invoices to their customers, on the basis of upward revision of the prices with retrospective effect in respect of the goods, which were cleared earlier and paid the differential duty. The Original Authority demanded interest on the differential duty under Section 11 AB of the Central Excise Act, 1944. The Commissioner (Appeals) set aside the adjudication order. Hence, the Revenue filed these appeals.

4. The Hon'ble Supreme Court in the case of Commissioner of Central Excise, Pune Vs. SKF India Ltd. – 2009 (239) ELT 385 (SC) held that interest under Section 11 AB of the Act is leviable on payment of differential duty at latter stage. 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 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 subsection (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.”

5. In view of the decision of the Hon’ble Supreme Court in the case of SKF India Ltd. (supra), the respondents are liable to pay interest. Accordingly, the impugned orders of the Commissioner (Appeals) are set aside. The orders of the Original Authority are restored. The appeals filed by the Revenue are allowed.

Order dictated & pronounced in open court on 06.10.2009.

(P.K. Das)
Member (Judicial)

Ckp.