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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/1440/2006-1441/2006 – SM [BR] Date 30/10/2009

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

To :
(1-2) DCM ENGINEERING PRODUCTS
ASRON, DISTT. NAWAN SHAHAR, PUNJAB

DCM ENGINEERING PRODUCTS Appellant
Vs
THE COMMISSIONER OF CENTRAL EXCISE Respondent
JALANDHAR

I am directed to transmit herewith a certified copy of **Final order No. 1342 - 1343 / 2009–SM[BR]** dated 8.10.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
THE COMMISSIONER OF CENTRAL EXCISE JALANDHAR
JALANDHAR (HQRS AT CHANDIGARH), PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017
2. Adv. / Consult
MR.S.C. KAMRA & CO.
B-2/210(BASEMENT), 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
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi-66
COURT-III

Date of hearing/decision: 8.10.2009

Excise Appeal No. 1440-1441 of 2006-SM
SM

[Arising out of Order-in-Appeal No.22-23/CE/Appl/Jal/06 dated 27.1.2006 passed by the Commissioner (Appeals), Central Excise, Jalandhar, 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.	
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

M/s DCM Engineering Products — Appellants

Vs.

Commissioner of Central Excise, Jalandhar — Respondents

Appearance:

Shri S.C. Kamra, Advocate for the appellants
Shri V.K. Saxena, Jt.CDR for the respondents

Coram: Hon'ble Shri P.K. Das, Member (Judicial)

Oral Order No. 1342 - 1343/2009 SM(BR)

Per P.K. Das :

These appeals are taken up for hearing in pursuance of the order/judgment dated 30.4.2009 passed by the Hon'ble High Court of Punjab & Haryana vide C.E.A. No.129/08 wherein Tribunal's order No.332-33/08-SM(BR) dated 15.1.2008 was set aside and the matters were remanded back to the Tribunal to decide the matters afresh in accordance with the law.

2. After hearing both the sides and on perusal of the records, I find that the original authority confirmed the demand of interest under Section 11AB of Central Excise Act, 1944. The finding of the original authority is that the appellants raised supplementary invoices to their customs on the basis of upward revision of the price with retrospective effect and paid the differential duty. Commissioner (Appeals) upheld the adjudication order. I find that the Hon'ble Supreme Court in the case of C.C.E., Pune vs.SKF India Ltd. [2009 (239) ELT 385 (SC)] held that the interest is payable on payment of differential duty in respect of upward revision of the price. 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 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 decision of the Hon'ble Supreme Court, I do not find any reason to interfere with the impugned order. Accordingly, both the appeals filed by the appellants are rejected.

(P.K.Das)
Member(Judicial)

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