

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/1079 - 1081/2009 – SM [BR]

Date 11/01/2011

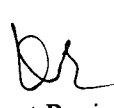
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)
C.C.E. LUDHIANA

Appellant
Vs
Respondent

M/S VARDHMAN SPECIAL STEEL,

I am directed to transmit herewith a certified copy of **Final order No. 38 – 40 / 2011- SM[BR]** dated 6.1.2011
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 VARDHMAN SPECIAL STEEL,
C-58, FOCAL POINT, LUDHIANA.

2. Adv. / Consult

NONE:-----

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -

7. Company Law Institute of India Pvt Ltd., No.2 (Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17

8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

10. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

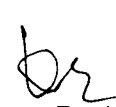
11. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)

12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070

13. Office Copy

14. Guard file

2. **M/S KAY JAY FORGING PVT. LTD. (UNIT-III)**
(PREVIOUSLY KNOW AS M/S SHEET COMPONENTS
PVT. LTD.) D-1, FOCAL POINT LUDHIANA.


Assistant Registrar
(SM Appeal Branch)

3. **M/S KAY JAY FORGING PVT. LTD.**
C-3, FOCAL POINT, LUDHIANA.

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

Excise Appeal No. 1079-1081 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. 12-14/CE/Apl/LDH/2009 dated 21.1.2009 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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 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?

Seen

4. Whether Order is to be circulated to the :
Departmental authorities?

NO

Commissioner of Central Excise.
Ludhiana

Appellants

Vs.

M/s. Vardhman Special Steel
M/s. Kay Jay Forging (P) Ltd.

Respondent

Appearance:

Shri S.K. Bhaskar, DR for the Appellants
None for the Respondent

Date of Hearing/decision : 06.01.2011

Final

ORAL ORDER NO. 38-40/2011 SRY (BV)

Per M. Veeraiyan:

These three appeals by the department are against the common order-in-appeal passed by the Commissioner (Appeals), Chandigarh vide No. 12-14/CE/Apl/LDH/2009 dated 21.1.09.

2. Heard the learned DR. None appears for the respondent inspite of notice. On earlier occasion i.e. on 23.11.10 also, none appeared on behalf of the respondents inspite of notice.
3. On hearing the learned DR and perusal of records, it is seen that the dispute relates to demand of interest on differential duty paid by the respondents consequent to receiving differential value based on supplementary invoices raised based on price escalation. The original authority confirmed the demand of interest of Rs.51,986/- from M/s. Vardhman Special Steel and imposed penalty of Rs.5,000/-. He confirmed the demand of interest of Rs.19,405/- and Rs.52,427/- in two cases from M/s. K.G. Forging Pvt. Ltd. and imposed penalty of Rs.5,000/- in each cases.
4. On appeal by the parties, Commissioner (Appeals) set aside the order⁸ of the original authority.
5. Learned SDR submits that the issue relating to interest on differential duty arising out of supplementary invoices has been settled

by the Apex Court in the case of CCE Pune vs. SKF Ltd. reported in [2009 (239) ELT 385 (SC)].

6. ~~As~~ The matter relating to interest liability has been decided in favour of the department by the decision of Hon'ble Supreme Court in the case of SKF Ltd. as under:

"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."

7. In view of the above, the order of the Commissioner (Appeals) in setting aside the demand of interest cannot be sustained. However, no penalty is warranted.

8. In view of the above, the orders of the Commissioner (Appeals) are set aside and the order of the original authority is restored in so far as the same relate to demand of interest on respondents. However, the penalties imposed by the original authority are not restored.

(M. Veeraiyan)
Member(Technical)

SS