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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/2923/2009 – SM[BR]** Date **14/06/2011**

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

To :
M/S CONDOR POWER PRODUCTS(P) LTD
PLOT NO 22, SECTOR-4, FARIDABAD

M/S CONDOR POWER PRODUCTS(P) LTD Appellant
Vs
C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No. 316 / 2011 –SM[BR]** dated 3.5.2011 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. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult
MR.SURESH AGGARWAL&VIVEK AGGARWAL,ADVOCATES
1324, SECTOR-28, FARIDABAD.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions 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. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Excise Appeal No. 2923 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 123/CE/Appl/DLH-IV/2009 dated 15/09/2009 passed by The Commissioner (Appeals), Central Excise & Service Tax, Delhi-I, Faridabad.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, 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? :

2. Whether it would 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 Department Authorities? :

Condor Power Products P.Ltd. Appellant

Versus

CCE, Delhi-IV Respondent

Appearance

Mr. Anil Khanna, Authorized Representative (SDR) – for the respondent.

Mr. Suresh Agarwal, Advocate – for the appellant.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING / DECISION : 03/05/2011.

Final Order No. 316/2011 SM (BR) Dated :

Per Rakesh Kumar :-

The Appellant are engaged in the manufacturing of electric motor, electric fans and PD pumps. The excise duty amount of Rs.9,65,000/- payable for the period from April, 2003 to July 2003 was late due to financial problems. Show Cause Notice were issued to the them for recovery of interest under Rule 8(3) of Central Excise Rules, 2002 and also for imposing penalty under Rule 25(1). The adjudicating authority confirmed the duty of Rs.9,65,000/- along with interest under Rule 8(3) and also imposed penalty of equal amount under Rule 25(1). On appeal to Commissioner(Appeals), the Commissioner (Appeals) while confirming duty demand along with interest, reduced the penalty to Rs.2,50,000/-. Appellant filed an appeal to Tribunal along with stay application. During the pendency of the appeal, the appellant in addition to duty, had also paid interest on the same as per the rates specified in Rule 8(3) of Central Excise Rules and the total interest paid was Rs.6,55,519/-. The Tribunal decided their appeal vide final order No.8/2007/SM(BR)(PB), dated 24.12.06, holding that the interest can be charged only at the rate of 2% per month, not at the rate of Rs.1000/- per day and as a result of the Tribunal's order interest liability got reduced to Rs.4,08,764/- and as such they became eligible for refund of Rs.2,46,755/-. The appellant on 31.01.07 informed the jurisdiction Assistant Commissioner that the excess interest of Rs.2,46,755/- has become refundable and they have taken its credit *suo-moto* in the PLA. The Assistant Commissioner was of the view that the appellant could not take suo-moto credit of the excess interest which has become refundable and they should have filed the refund application under Rule 11B of Central Excise Act. The Assistant Commissioner issued show cause notice dated 24.12.07 for recovery of this amount along with interest and imposition of penalty. The Assistant Commissioner vide Order-In-Original dated 29/12/08 disallowed the self-credit of Rs.2,46,755/- and directed them to deposit this amount through TR-6 Challan and also ordered the interest on this amount and imposed penalty of equal amount under section 11AC. On appeal to Commissioner (Appeals), the Commissioner (Appeals) made Order-In-Original dated 15.09.09 upheld the Order-In-Original in toto and dismissed the appeal. Against this order, the present appeal has been filed.

2. Heard both the sides.

3. Shri Suresh Agrawal, Advocate, the Ld. Counsel for the appellant, pleaded that on account of final order dated 28.12.06 of the Tribunal, the amount of Rs.2,46,755/- which represented the excess interest paid by them had become refundable, that they took its credit in the PLA under intimation to Assistant Commissioner, that since no unjust enrichment was involved, no refund application was required to be filed, that the judgement of the Larger Bench of the Tribunal in the case of BDH Industries Ltd. vs. CCE, Mumbai-I reported in 2008(229)/ELT/364(Tri.-LB), is not applicable to the facts of that case as in that case, the Tribunal's Larger Bench has held that suo-moto refund of excess duty by the way of self credit the PLA is not permitted and any correction in PLA/Cenvat account needs to have department's sanction, while in this case what had become refundable was excess interest only, not excess duty and hence no refund application was required to be filed, that Tribunal in the case of Bock India Pvt. Ltd. vs. CCE, Vadodara reported in 2011(22) -252 has held that the judgment of Larger Bench of Tribunal in

the case of BDH Industries Ltd. is not applicable when the amount of pre-deposit made during pendency of appeal became refundable when the appeal was decided in the appellant's favour, that judgement in the case of Bock India P.Ltd. (supra) is squarely applicable to the facts of this case and that in view of this, the impugned order is not correct.

4. Shri Anil Khanna, ld. SDR defended the impugned order of the Assistant Commissioner and pleaded that provisions of 11B would apply for the refund of interest also, in view of the judgement of Larger Bench of the Tribunal in the case of BDH Industries Ltd. (supra) and that there is no infirmity in the impugned order.

5. I have carefully considered the submissions from the Departmental Representative and perused the records.

6. The dispute in this case is about refund of excess interest. During the pendency of the appeal, the interest on late payment of duty had been paid the rate specified under Rule 8(3) of Central Excise Rules 2002, i.e., Rs.1000 per day or 2% per month, whichever is higher and on this basis, the total interest for late payment of duty paid by them was Rs.6,55,519/-. Subsequently when their appeal was decided by the Tribunal vide final order dated 28.12.06, the Tribunal besides setting aside the penalty, also held that they would be required to pay interest only @ 2% per month. There is no dispute that on account of Tribunal's order, their interest liability got reduced to Rs.4,08,764/- and the excess interest paid Rs2,46,755/- became refundable. The point of dispute is as to whether the appellant for refund of this amount should have filed a refund application under section 11B of Central Excise Act or they could take it suo-moto credit in the PLA. During the period prior to 11.05.08, section 11B provided for refund of duty only and this section was not

applicable for refund of interest. The provisions of this section were extended to refund of interest only w.e.f. 11.05.08. The judgement of Larger Bench of the Tribunal is with regard to suo-moto refund of excess duty paid and according to this judgement under no circumstances, the suo-moto credit of excess duty paid or twice paid duty can be taken in the PLA without prior sanction of the department and that in every case of refund of excess duty paid, an application under section 11B is required to be filed. In my view during the period prior 11.05.08, the judgment of the Larger Bench would not be applicable to the refund of interest. Moreover, in this case, when the interest was for late payment of duty, there would not be any question of unjust enactment. In view of this, I am of the opinion that it is the judgement in the case of Bock India P. Ltd. vs. CCE, Vadodara (supra) which would be applicable to the facts of this case. In view of this, the impugned order is not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

RK-I