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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/2917 - 2920/2007 & 2923/2007 – SM [BR]** Date **29/06/2011**

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

To :
(1-5) **M/S U.S.FOODS PVT.LTD.**
PLOT NO 8 & 9 NAYIONAL HIGHWAY, GHAJRAULA

M/S U.S.FOODS PVT.LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No347-351/2011-SM[BR]** dated 16.6.2011 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. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEW DELHI-70.

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)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH
Court No.III

Excise Appeal No.E/2917-20 & 2923/07-SM

(Arsing out of Order-in-Appeal No.172-181/CE/MRT/II/07 dated 26.07.07 passed by the CCE (A), Meerut)

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

M/s.U.S.Foods Pvt.Ltd. Appellants

Vs.

CCE, Meerut Respondent

Present for the Appellant: Shri Biping Garg,Advocate & Ms.Sukriti Das, Advocate

Present for the Respondent: Shri S.k.Bhaskar, SDR

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

Date of Hearing: 16.06.2011
Date of Decision: 16.06.2011

Final **ORDER NO.** 347- 351/2011 SM (BR)

PER: M.VEERAIYAN

These five appeals, by the same appellants involve a common issue and arise out of common order-in appeal of the Commissioner (Appeals) No.172-181/CE/MRT/II/07 dated 26.07.07.

2. Heard both sides.

3. The relevant facts of the case, in brief, are that the appellants defaulted in payment of duty partly for six months (in appeal No.E/2920/07, the default relates to 2 months April & May, 04 and in other appeals default of one month each is involved). The appellants paid part of duty due for the months of April, 04 to July, 04 and September, 04 and March,05 and balance was paid later after delays ranging from 5 days to 85 days. While paying the balance of duty for the above months, after the delay, they have used the credit accrued after the due date of the concerned months. In view of the delay, the original authority held that there was violation of rule 8 of Central Excise Rules and consequently penal action under Rule 8(3) (A) was mandatory and accordingly he confirmed the demand of interest equal to duty amount defaulted for the concerned months and also imposed equal amounts as penalties (under Rule 25 of Central Excise Rules) and in one case under section 11AC.

4. Learned Advocate for the appellant submits that they faced unprecedented financial crisis and therefore there was delay in payment of part of duty in respect of a few months. These are not the cases of any clandestine removal or removal with intention to evade duty. He submits that, in all these cases, the goods have been cleared after duly recording the production and clearances and after preparations of invoices. Part of duty involved for each month also stands paid in time. In such a situation, they have made payment of balance of duty alongwith interest as provided under

Section 11AB of Central Excise Act, 1944. There is no justification for imposition of penalties. In case penalty is held imposable, the same is liable to be imposed only under Rule 27 of Central Excise Rules, 2002. He also submits that there is no scope for demanding interest at the rate of Rs.1,000/- per day for everyday of delay as the said rule has been strictly construed by Hon'ble Rajasthan High Court in the case of Lucid Colloids Limited vs. Union of India reported in 2006 (200) ELT 377. He also relies on the decision of the Tribunal in the case of Kitply Industries Ltd. CCE, Meerut-2009 (243) ELT 2009 and the decision in the case of Shaligram Laminates Pvt.Ltd. vs. CCE, Ahmedabad reported 2009 (244) ELT 570.

5. Learned SDR reiterating the findings and reasoning of the Commissioner (Appeals) submits that the duty due for every month is required to be strictly paid within the prescribed time limit. There have been delay in payment for several months by the appellants. Such default clearly attracts penal action under the provisions of Central Excise Rules as stipulated under Rule 8 (3) of Central Excise Rules, 2002 and such clearances involving default are treated as non duty paid clearances and therefore penalty under Rule 25 is warranted.

6.1 I have carefully considered the submissions and perused the records. In the present case, undisputedly the clearances were after due accountal of the goods in the production records and after issue of Central Excise invoices and clearances have been reflected in the returns submitted to the department. At the same time, it is also not disputed that the appellants have failed to pay duty in full for the six months within due dates but made payment only partly. There is delay in payment of balance amount of duty which is ranging from 5 days to 85 days. Therefore, the clearances effected during the impugned months are deemed to be non duty paid clearances and penal consequences under Central Excise Rules consequently follow. These cases, however, cannot attract the provisions of Section 11AC which is clear from the wording of the Rule 8 (3) which reads as follows:

"If the asessee fails to pay the amount of duty by the issue date, he shall be liable to pay the outstanding amount alongwith an interest at the rate of two per cent per month or rupees one thousand per day, whichever is higher, for the period starting with the first day after due date till the date of actual payment of the outstanding amount:

Provided that the total amount of interest payable in terms of this sub-rule shall not exceed the amount of duty which has been paid by due date:

Provided further that till such time the amount of duty outstanding and the interest payable thereon are not paid, it shall be deemed that the goods in question in respect of which the duty and interest are outstanding, have been cleared without payment of duty, and where such duty and interest are not paid within a period of one month from the due date, the consequences and the penalties as provided in these rules shall follow."

6.2 Therefore, penalties are warranted in terms of ~~Rule 27 of~~ Central Excise Rules only and not under Section 11AC. Considering the entire facts and circumstances of the case, leniency is required on the quantum of penalty imposed.

7. Other submissions of the learned Advocate for the appellants was regarding the rate of interest to be applied. The Hon'ble Rajasthan High Court in the case of Lucid Colloids Limited vs. Union of India has held that Rule 8 (3) to the extent it provided levy of the interest at the rate of Rs.1,000/- per day is ultra vires to Section 11AB of the Act. At the same time, the authorities below have taken the interest as equal to duty amount which was defaulted. This is only the maximum which was prescribed and interest payable should be determined at the rate specified in the rules (ignoring rate of Rs.1,000/- per everyday of delay).

8. In view of the above, the appeals are disposed of as follows:-

(a) There shall be penalty of Rs.5,000/- only for every month of default.

(b) The amount of interest shall be by the original authority recalculated in the light of the observations made above and after granting a reasonable opportunity of hearing to the appellants.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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