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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/2725/2009 – SM[BR]** Date **21/07/2011**

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

To :
M/S ESTER (INDIA) CHEMICALS PVT. LTD.
C-4/1, SITE IV INDL. AREA, SAHIBABAD,
GHAZIABAD (U.P.)

M/S ESTER (INDIA) CHEMICALS PVT. LTD. Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 410/2011-SM[BR]** dated 12.7.2011 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. GHAZIABAD
C.G. O. COMPLEX-II, KAMLA
NEHRU NAGAR, GHAZIABAD
201302

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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-IV
Excise Appeal No.2725 of 2009-SM

Date of Hearing/Decision: 12.07.2010

(Arsing out of Order-in-Appeal No.169-CE/GZB/2009 dated 30.6.09 passed by the CCE (A), Meerut-I)

For approval and signature:

Hon'ble Mr.Ashok Jindal, 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?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s.Ester (India) Chemicals (P) Ltd. Appellant

Vs.

CCE,Ghaziabad Respondent

Present for the Appellant: Shri B.L.Narsimhan, Advocate
Present for the Respondent: Shri Fateh Singh, SDR

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final **ORDER NO.** 410/2011 SM (Br)

PER: ASHOK JINDAL

The appellants are in appeal against the impugned order confirming the proposal made in the show cause notice by setting aside the adjudication order.

2. The brief facts of the case are that the appellants are manufacturers of Ethyl, butyl, Acetate and Diethyl Oxalate. It was alleged that during the period from May, 2002 to June, 2004, the appellants wilfully and fraudulently made entries in their PLA without depositing the duty through TR-6 challans, whereas during the months of May, 2002 to June, 2004, they had shown the transaction of credit and debit of duty in monthly PLA. As such, they had mis-stated the fact of debiting the duty during these months. Thus, the appellants had not paid duty during the period May, 2002 to June, 2004 of Rs.1,39,24,218/-. The appellants were asked to produce the respective TR-6 challans. The appellants produced TR-6 challans showing payment of duty and challans showing payment of interest for delayed payment for the period from May, 2002 to June, 2004. So out of total payment of duty and interest, the amount of Rs.1,30,58,470/- was adjusted for duty and Rs.47,30,233/- was adjusted against interest. Therefore, it was found that the appellants had not paid duty amount of Rs.8,65,740/- during May, 2002 to June, 2004. Therefore a show cause notice was issued to the appellants demanding the said amount alongwith interest. The adjudicating authority has dropped the demands holding that the appellants have paid due duty alongwith interest, therefore, no demand is sustainable as per show cause notice. The department filed appeal against the said order, the Commissioner (Appeals) set aside the adjudication order. Thus, the appellants are in appeal aggrieved by the impugned order.

3. Shri B.L.Narsimhan, Advocate, learned Counsel for the appellants appeared and submitted that it is an admitted fact that the appellants could not deposit the duty in time as fortnightly or monthly as required to pay under the provisions of law, but they were paying duty through TR-6 challans on periodically basis and by challan dated 21.8.04, the appellants paid all duties payable by them till that time. Thereafter, by TR-6 challan, they have paid the interest on delayed payment on 14.12.04. They have also supplied the calculation sheets of duty and interest due which was found to be in order by the adjudicating authority, therefore show cause notice was dropped. He further submitted that TR-6 challans are clearly showing that which amount paid by the appellants against duty demand and which amount they paid under the head of interest. Therefore, the demand raised by the department is totally illogical as per Rule 8(3) of Central Excise Rules,2002 provides that if the assessee defaults in payment of duty then the assessee shall pay excise duty alongwith interest on the outstanding amount for the period starting from first day after due date till the date of actual payment of the outstanding amount. The appellants have paid duty alongwith interest, therefore, the demand of duty is not sustainable. He also submitted that the duty is the liability of the appellants and that liability becomes a debt. Therefore the relationship between the department and the appellants is like debtor and creditor and the provisions of Section 59 and 60 of Indian Contract Act shall apply to the facts of the present case. Therefore, when the appellants have paid duty that is to be considered as duty that cannot be adjusted against the payment of interest. Therefore, the impugned order is to

be set aside. To support his contention, he relied on the decision of the Hon'ble Kerala High Court in the case of Vijaya Oil Mills vs. State of Kerala reported in 1980 (45) STC 463. He also relied on the decision of the Tribunal in the case of Shriram Pistons & Rings Ltd. vs. CCE, Ghaziabad0 reported in 2003 (152) ELT 359. He further argued that the show cause notice invoking the extended period of limitation is not sustainable as there is no suppression or wilful mis-statement or contravention of any provisions with intent to evade duty. Therefore, on limitation they are also having a good case.

4. On the other hand, learned DR appeared on behalf of the Revenue and submitted that in this case Rule 8(4) is applicable and whatever amounts have been paid by the appellants. Therefore, the demand is correctly made in the show cause notice and the lower appellate authority has rightly confirmed the demand. He further submitted that the same view has been taken by this Tribunal in the case of Goldstone Teleservices Ltd. vs. CCE, Hyderabad-III reported in 2007 (209) ELT 23. He also submitted that as the appellants have not paid duty in time and defaulted in payment of duty and therefore, the extended period of limitation is invokable in the facts and circumstances of the present case.

5. Heard both sides and considered the submissions made by them. first, I want to decide in the facts and circumstances of the case whether the demands are barred by limitation or not. I have gone through the records and found that the appellants have paid duty, although short but there has been duly recorded in the statutory records and intimated to the department through ER-1 returns

periodically. Moreover, when the total dues were paid and liability of interest was discharged by the appellants through TR-6 challan dt.14.12.04. It was in the knowledge of the department that the appellants have defaulted payment of duty and now the appellants have paid interest also thereon. Therefore, the allegations of suppression, wilful mis-statement, fraud, collusion or contravention of any Rules with intent to evade duty are not sustainable. Hence, the extended period of limitation is also not invokable in the facts and circumstances of the case. Therefore, show cause notice issued on 5.6.07 for the period from May, 2002 to June, 2004 is not sustainable as the extended period of limitation is not invokable. Therefore, the demand is barred by limitation. As the appellants have succeeded on limitation, therefore, I do not want to go into the merits of the case. Hence, without prejudice to the right of the appellants on merits, I allow the appeal on limitation only. The impugned order, is therefore, set aside and appeal is allowed with consequential benefits.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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