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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/2037/2009 – SM[BR]** Date **26/07/2011**

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

To :
M/S EMPIRIC TOOLS & COMPONENTS,
19-C, NIT INDUSTRIAL AREA, FARIDABAD.
(HARYANA)

M/S EMPIRIC TOOLS & COMPONENTS, Appellant

Vs

C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No. 427 /2011-SM[BR]** dated 23.6.2011 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. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult
MR.K.K.SHARMA,
A-115, GROUND FLOOR, ASHOKA ENCLAVE, PART-II, SECTOR-37, FARIDABAD (HARYANA)

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. IV
Excise Appeal No. 2037 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 41/CE/APPL/DLH-IV/2009, dated 13.04.2009 passed by The Commissioner (Appeals), Customs, New Delhi.]

For Approval and signature :
Hon'ble Shri M.V.Ravindran, 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?	:	No
2.	Whether it would 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 Department Authorities?	:	Yes

Empiric Tools & Components — Appellant

Versus

CCE, Delhi-IV — Respondent

Appearance
Shri K.K.Sharma, Advocate - for the appellant.
Ms. Renu K.Jagdev, SDR – for the respondent.

CORAM : **Hon'ble Shri M.V.Ravindran, Member (Judicial)**

DATE OF HEARING / DEICISION : 23/06/2011.

Final Order No. 427/2011 SM(BR) Dated : ____________

Per M.V.Ravindran

This appeal is filed by the appellant against Order-In-Appeal No. 41/CE/APPL/DLH-IV/2009, dated 13.04.2009.

2. The relevant facts that arises for consideration are appellant herein is running an industry and was manufacturer of sheet metal, tolls, injection mould and components. The appellant was availing the benefit under Rule 8 of Central Excise Rules for discharge of duty liability. During the month of July, 2006, the appellant was liable to pay total duty of Rs.83,067/-. Out of this total duty payable, the appellant short paid an amount of Rs.13,287/-. The said short payment of duty was not paid within the time period as indicated under Rule 8 of the Central Excise Rules, 2002. For the period August, 2006 to June, 2007, the appellant paid the duty liability within the time prescribed. For the month of February and March, 2007, appellant again defaulted making the payment of Rs.1,82,859/- and Rs.5,882/- which he made good on 11/06/07. After payment of duty liability for the month of February, 2007 which was he was supposed to discharge upto 31/03/07 which he did not do so, the appellant utilized the facility of Cenvat Credit for the clearance of goods for the month of March, 2007, which he could not have done so. He should have paid the amount of duty for the month of March, 2007 in PLA. Having deposited the balance of duty payment of these two months, the appellant consciously utilized the benefit of deferred payment of duty for the month of April and May, 2007 which could not have done so. He should have paid the amount for these two months through the PLA. The lower authorities issued Show Cause Notice for the demand of duty for the entire period from August, 2006 to May, 2007. Both the lower authorities have held that the appellant is liable to pay duty liability for the period of August, 2006

to May, 2007 which he has done so by utilizing the Cenvat credit and also equivalent penalty and interest on the amount.

4. Ld. Counsel submits that entire case on record should be perused and would rely upon page 75 of appeal memorandum. It is her submission that there was no intention to avoid paying the duty. It is her submission that having deposited the amount of duty for the month of April, 2007 and May, 2007, he will pay balance duty immediately (the difference between the duty payable and already paid by him). It is the submission that penalty be set aside on the appellant as has been held by Hon'ble High Court of Gujarat. It was submitted that penalty be not imposed on the balance amount as has been held by Hon'ble High Court of Gujarat in the case of CCE vs. Saurashtra Cements Ltd. reported in 2010(260) ELT71(Guj). It is the submission that there is no intention to evade payment of duty as the invoices were made and the goods were cleared on invoices.

5. Ld. SDR would draw my attention towards the functioning of the assessee. It is her submission that quarterly returns as applicable to the appellant in this case should have been filed on the completion of quarter and they delayed all the subsequent returns also. It is her submission that the appellant had balance of duty in the Cenvat a/c for February, 2007. It is her submission that having deposited the duty payment for the month of July, 2007, the appellant was, as per the provision of Rule 8, liable to discharge the duty liability to which he has not done so. She would submit that orders of the lower authorities are correct in this regard.

6. I have considered the submissions made by both sides and perused the records.

7. It is undisputed in this case that the appellant had deposited the due payment of Rs.13,288/- in the month of June, 2006 which he should have done so by 05/08/06. It is also undisputed that the amount paid by him along with interest on 13/04/07. During the period August, 2006 to June, 2007, there is no dispute that the duty liability for these months were paid in time. Of course there is an error on the part of assessee that he did not file quarterly returns to the authorities in order to arrive at a solution.

8. In my considered view, the appellant having paid the amount of Central Excise duty for the period August, 2006 to June, 2007 within the time, utilized the Cenvat credit availed by him under Cenvat Act cannot be said to have violate Rule 8(3) for an amount of Rs.13,287/- for the month of July, 2007. The lower authorities order which confirms the demand of duty for the period of August, 2006 to June, 2007 seems to be harsh and disproportionate. The demand for this period is liable to be set aside and I do so.

9. As regards the amount to be paid by the appellant for the month of February and March, 2007, it is seen from the records that the appellant had despite having the credit balance did not utilized Cenvat credit and made the payment of Rs.182,859/- for the month of February, 2007 and Rs.5,882/- for March, 2007. Both these amounts were repaid by the appellant in the month of June, 2007. Lower authorities have confirmed these demands also. The appellant having already discharged duty liability through PLA for the month of

June, 2007. In my considered view, these demands of duty for two months from PLA needs to relooked. In my view, I hold that both lower authorities orders were correct to the extent the appellant having defaulted in making the payment of February, 2007 and March, 2007.

10. The violation of rule may be due to ignorance, with the above observation, I remand the matter back to the adjudicating authority for the purpose of quantification of the demand of duty and impose the appropriate penalties in light of above decision. Appeal is disposed off as indicated above.

(Dictated and pronounced in open court.)

(M.V.Ravindran)
Member (Judicial)

RK-I