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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/798 /2011 – SM[BR] **Date 12/10/2011**

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

To :
M/S ASHOKA INDUSTRIES,
F-143-144, ROAD NO.7, RIICO INDUSTRIAL AREA,
POST-BINDAYAKA, DISTT. JAIPUR.
M/S ASHOKA INDUSTRIES, Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 684 / 2011-SM[BR]** dated 27.9.2011 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. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.PANKAJ MALIK
CHARTERED ACCOUNTANTS 207-208, SHREE GOPAL TOWER, KRISHNA MARG, C-SCHEME, JAIPUR-302001

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. 2, R.K. Puram, NEW DELHI

COURT No. III

Excise Appeal No.798 of 2011(SM)

[Arising out of Order-In-Appeal No.17(DKV)/CE/JPR-I/2011, dated 20.01.2011 issued by CCE, Indore]

Date of Hearing / Decision : 27.09.2011.

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member

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?	Yes

M/s Ashoka Industries — Appellant
Versus
CCE, Jaipur — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member

Present for the Appellant - Shri Sukriti Das, Advocate
Present for Respondent - Shri B.L.Soni, SDR

Final **Order No.** 684/2011 SM (BR) **Dated :**________

Per Ms. Archana Wadhwa:

After hearing both the sides, I find that the issue in the present appeal relates to the demand of interest of Rs.44,497/- in terms of Section 11AB of Central Excise Act, 1944 on the differential duty which stands paid by the appellants, being ~~in~~ the difference in assessable value of goods cleared by them under

Central Excise invoices and the subsequently raised supplementary invoices. It stands admitted by both sides that the issue on merits is no longer res integra and stands settled by the Hon'ble Supreme Court in the case of CCE, Pune vs. SKF India Ltd. reported in 2009(239)ELT385(SC) and the subsequent decision of the Hon'ble Apex Court in the case of CCE vs. International Auto Ltd. reported in 2010(250)ELT3(SC). It stands held in the said judgement that the price difference between the date of removal and the enhancement price at which the gods are ultimately sold, is liable to be charged to interest in terms of proviso to Section 11AB. As such, in view of the above declaration of law by the Apex Court, I hold that the appellant is liable to pay the interest on the value between the original price and the value at which the goods were ultimately sold by way of raising supplementary invoices.

2. Ld. Advocate appearing for the appellant submits that the Show Cause Notice stand raised for confirmation of interest beyond the normal period of limitation and as such the same would be barred by the bar of limitation. On the other hand, ld. SDR draws my attention to the Tribunal's decision laying down that since interest is an appendix ~~abundant~~ to principal amount and there being no limitation prescribed under the law, the plea of limitation would not be available to the appellant.

3. I find that the issue no more res integra. In the case of Abhinav Industries vs. CCE reported in 2011(264)ELT538(Tri.-

Del.), while dealing with an identical issue, the Tribunal observed as under :

> *"5. Examining the above plea independently, I find that the limitation provisions are contained in Section 11A of the Central Excise Act, 1944. On going through the same, I find that they are related to recovery of duty not levied or not paid or short levied or short paid or erroneously refunded. There is not even a whisper of the word 'interest' in the said section so as to indicate that the limitation, as contained in the said section applies to interest.*
>
> *6. On the other hand I find that the interest liability arises in terms of provisions of Section 11AB. The said section is to the effect that where any duty of excise has not been levied or paid, or has been short levied or short paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2) of Section 11A, shall in addition to the duty, being liable to pay interest at such rate ..... till the date of payment of such duty. A reading of the above provision makes it clear that there is no time limit fixed by the legislation for payment of interest in respect of the duty confirmed against the assessee. In fact, the Hon'ble Bombay high Court in the case of CCE, Aurangabad vs. Padmashri VV.Patil S.S.K.Ltd. reported in 2007(215)ELT23(Bom.) has held that even if no notice is issued, interest is liable to be paid for the delayed payment of duty. Use of words 'shall' and 'be liable' appearing in the relevant section indicate absence of option and chargeable of interest in all cases of nonpayment or short payment.*
>
> *7. It is well settled that interest being appending to the principal amount and when the principal amount is to be paid by the assessee to the exchequer, as confirmed in terms of Section 11A, interest liability would arise automatically. In the absence of any provision, laying down any time limit for raising of interest demand and in the light of the Bombay High Court judgement liability of interest is to be paid automatically without any notice and as such, the question of limitation does not arise."*

3. Similarly in the case of Needle Industries (I) (P) Ltd. reported in 2011(21)STR481(Trib.-Chennai), it was observed that the arguments advanced on behalf of the department have force. No separate show cause notice is required for recovery of interest or for adjustment of any amount due from an assessee from the amount payable to him. Hence, the impugned order passed following the Tribunal's decision does not require any interference. However, the appellants are free to pursue the matter relating to the original amount paid by them under protest in accordance with law.

4. In as much as the issue has been settled by the above decision of Tribunal, I find no merits in the appeal, the same is accordingly rejected.

(Dictated and pronounced in the Open Court)

(Archana Wadhwa)
Judicial Member

RK-I