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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/1179/2008 – SM[BR] Date 16/03/2010

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

To :
M/S DYNAMIC ENGINEERS
F-260, ROAD NO. 13,V.K.I.AREA,JAIPUR.

M/S DYNAMIC ENGINEERS Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 331 / 2010 –SM[BR] dated 9.3.2010 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 SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

BENCH-SM

Date of Hearing/Decision:09.03.2010

Excise Appeal No.E/1179/08-SM

[Arising out of Order-in-Appeal No.67 (RKS)CE/JPR-I/2008 dated 17.04.2008 passed by the Commissioner (Appeals), Central Excise, Jaipur].

For approval and signature:

Hon'ble Mr.S.K. Gaule, 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 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. Dynamic Engineers ...Appellant

Vs.

CCE, Jaipur-I ... Respondent

Present for the Appellant :Shri.Atul Gupta, Advocate
Present for the Respondent:Shri. S.K. Bhaskar, JDR

Coram: Hon'ble Mr. S.K.Gaule, Member (Technical)

Final **ORDER NO.** 331/2010 SM (Br) **DATED:09.03.2010**

PER: S.K.GAULE

Heard both sides. The appellant filed this appeal against Order-in-Appeal No. 67 (RKS) CE/ JPR-1/2008 dated 27.3.2008 whereby Commissioner (Appeals) has upheld the lower adjudicating authorities order on the recovery of interest amounting to Rs.20,268/- under section 11AB of Central Excise Act 1944 read with Rule 8 of the Central Excise Rules, 2002.

2. The contention of the appellant is that they are not contesting the liability of differential duty and interest. However they raised the issue of limitation time, admittedly, which was not raised before the lower Authorities. The appellant placed reliance on KEC International Ltd. vs. CCE, Jaipur reported in 2010 (96) RLTONLINE 48 (CESTAT-Del.), M/s. Rajasthan Transformer & Switchgears vs. CCE Jaipur vide Oral Order No. 97-99/2010-SM dated 14.1.2010 in Excise Appeal No.2085 of 2007-SM & Commr. Vs. T.V.S.Whirlpool Ltd. reported in 2000 (119) ELT 177.

2. The contention of the Revenue is that the interest is civil liability and the case is not time barred. The contention is that the appellant has not raised the issue of limitation of time at any stage. The appellant they also placed reliance on Hon'ble Supreme Court decision in the case of Commissioner of Central Excise, Pune vs. SKF India Ltd. reported in 2009 (239) ELT 385 (S.C.).

3. I find that there is no dispute about the differential duty payable due to price escalation as the same has already been paid. The issue whether interest is liable to be paid also stands settled by the Hon'ble Supreme Court in SKF India Ltd. case cited supra. The question whether in determining the liability to interest the bar of limitation would apply or not both sides

agree that the issue of bar of limitation was not raised before the Original authorities. The appellant seeks the opportunity for presenting the case and, therefore, seeks remand, whereas ld. SDR seeks final decision by the Tribunal. The Tribunal in the case of KEC International has held that limitation is always a mixed question of law and facts which would be appropriate to remand the matter to the original authority so that both sides get opportunity to present their case. Therefore the matter requires reconsideration. In view of the above, I set aside the order of the Commissioner (Appeals) and direct the original authority to decide the case afresh by considering the applicability of bar of limitation in relation to recovery of interest by affording an opportunity of hearing to the appellant. Appeal allowed by way of remand.

[Dictated & Pronounced in the open Court].

(S.K. GAULE)
MEMBER (TECHNICAL)

Anita