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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/1160/2008 – SM[BR] Date 12/04/2010

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

To :
M/S MODERN TRANSFORMERS
E-94, BAPI INDUSTRIAL AREA,DAUSA (RAJ.)

M/S MODERN TRANSFORMERS Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 417 / 2010 –SM[BR] dated 16.3.2010 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)

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. III

Excise Appeal No. 1160 of 2008 (SM)

[Arising out of the Order-in-Original No. 14/2008 (C.E.) dated 29/04/2008 passed by The Commissioner, Central Excise, Jaipur.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, 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 would 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 Department Authorities?	:

M/s Modern Transformers — Appellant

Versus

CCE, Jaipur – I — Respondent

Appearance

Shri Atul Gupta, Advocate – for the Appellant

Shri S.K. Bhaskar, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 16/03/2010.

Final Order No. 417/2010-SM(BR) Dated : ______________

Per. Rakesh Kumar :-

The facts giving rise to this appeal are, in brief, as under.

1.1 The appellant are manufacturers of transformers chargeable to Central Excise Duty. They had supplied transformers to various electricity boards against contracts with price escalation clause. During the period from January 2006 to September 2006, on receipt of price escalation amount on account of price variation they paid Central Excise Duty amounting to Rs. 53,12,572/- on this amount under supplementary invoices. However, they did not pay the interest amounting to Rs. 1,51,428/- on this duty as per the provisions of Section 11AB of Central Excise Act, 1944. When this non-payment of interest was detected, the department issued a show cause notice dated 23/1/08 for recovery of interest amounting to Rs. 1,51,428/- and also for imposition of penalty on them under Rule 27 of Central Excise Rules, 2002 for contravention of the provisions of Rule 8 ibid. The show cause notice was adjudicated by the Commissioner vide order-in-original No. 14/08 (C.E.) dated 29/4/08 by which the interest demand was confirmed but no penalty was imposed on the appellant. It is against this order of the Commissioner (Appeals) that the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Atul Gupta, Advocate, the learned counsel for the appellant while conceding that the issue on merit stands decided against them by the Hon'ble Supreme Court's judgment in the case of **CCE, Pune – III vs. SKF India Ltd.** reported in **2009 (239) E.L.T. 385 (S.C.)**, the demand of interest is time barred as while the interest demand is for the period from January 2006 to September 2006, the show cause notice was issued only on 23/1/08, that Tribunal in the case of **CC, Madras vs. T.V.S. Whirpool Ltd.** reported in **1996 (86) E.L.T. 144** had held that for recovery of interest on Customs

Duty, the limitation period applicable would be that prescribed under Section 28 of the Customs Act, 1962 for recovery of short paid duty, that this judgment of the Tribunal has been upheld by the Hon'ble Supreme Court vide judgment reported **2000 (119) E.L.T. A177 (S.C.)**, wherein Hon'ble Supreme Court while dismissing the Government's SLP observed that "*it is only reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the claim for interest thereon*" and that in view of this, the limitation period prescribed under Section 11A would be applicable for recovery of interest and accordingly interest demand is time barred. He, however, mentioned that the plea regarding limitation was not raised before the Commissioner, the Adjudicating Authority, but pleaded that in view of the Tribunal's judgment in the case of **KEC International Ltd. vs. CCE, Jaipur** reported in **2010 (96) RLTONLINE 48 (CESTAT – DEL.)**, this matter may be remanded to the Commissioner for deciding the issue of limitation.

2.2 Shri S.K. Bhaskar, the learned Departmental Representative, while defending the impugned order pleaded that on merits, the issue already stands decided in favour of the Department by Hon'ble Supreme Court, that for recovery of interest for delay in payment of duty, no limitation period is prescribed, that the duty had been paid under Section 11A (2B) under which the interest is automatic in view of Explanation II to this Section and when the interest has not been paid, the same can be recovered at any time and for that, there is no limitation period prescribed. He also relied upon the judgment of Hon'ble Bombay High Court in the case of **CCE & C Aurangabad vs. Padmashri V.V. Patil S.S.K. Ltd.** reported in **2007 (215) E.L.T. 23 (Bom.)**, wherein it was held no limitation period is applicable for recovery of interest and no show cause notice is required to be issued.

3. I have carefully considered the submissions from both the sides and have perused the records. The Central Excise Duty on the price escalation amount had been paid under the supplementary invoices during period from January 2006 to September 2006 but at that time while payment of differential duty on the price escalation amount, the interest on duty as per the provisions of Section 11AB was not paid. The show cause notice for recovery of interest was issued only on

23/1/08 and the same was adjudicated by the Commissioner vide the impugned order by which the interest demand was confirmed. So far as merits of the case was concerned, the issue now stand decided against the appellant by the Hon'ble Supreme Court judgment in the case of CCE, Pune vs. SKF India Ltd. (supra). The appellant, however, plead that the demand is time barred, as while the interest demand pertains to January 2006 to September 2006 period, show cause notice had been issued only on 23/1/08 and as per the judgment of the Tribunal in the case of CC, Madras vs. T.V.S. Whirpool Ltd. (supra) upheld by the Hon'ble Supreme Court, the limitation period applicable for recovery of the principal amount would also apply for recovery of interest. In view of Hon'ble Supreme Court's judgment in the case of Union of India vs. T.V.S. Whirpool Ltd. (supra), the limitation period prescribed under Section 11A of Central Excise Act would be applicable for recovery of interest. However, since, in this case the issue of limitation was neither raised not considered before the Commissioner and question of limitation is mixed question of facts of law, this has to be decided by the original Adjudicating Authority for which this matter would have to be remanded. In view of this, the impugned order is set aside and the matter is remanded to the Adjudicating Authority for considering as to whether the show cause notice dated 23/1/2008 issued for recovery of interest was within time. The appeal stands disposed off, as above.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

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