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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/1090 – 1092 / 2008 –SM[BR] E / CO / 341 / 2008-SM[BR] Date 13/04/2010

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

To :
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD,
HARYANA 121001.
C.C.E. DELHI IV Appellant
Vs
M/S XPRO INDIA LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 424-426 / 2010 –SM[BR] Dated 26.3.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent

M/S XPRO INDIA LTD
PLOT NO-3,INDUSTRIAL AREA NIT,FARIDABAD HARYANA

2. Adv. / Consult SHRI K.L.HANDA CONSULTANT.
H.NO.689 , SECTOR-16, FARIDABAD

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

[2] M/S FRIENDS AUTO [INDIA] LTD.
38-A, INDUSTRIAL AREA FARIDABAD.
[3] M/S DEE ESS BUHIN [P] LTD.
PLOT NO. 88, SECTOR-24 , FARIDABAD

Assistant Registrar
(SM Appeal Branch)

## IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

**Excise Appeal No. 1090-1092 of 2008-SM(BR)**
**Excise Cross Objection No. 341 of 2008-SM(BR)**

**For approval and signature:**
Hon'ble Mr. M. Veeraiyan, 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? : Yes
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

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**Excise Appeal No. 1090 of 2008-SM(BR)**

[Arising out of Order-in-Appeal No. 24/CE/Appl/DLH IV/2008 dated 25.3.2008 passed by the Commissioner of Central Excise (Appeals), Faridabad]

C.C.E., Faridabad ... Appellants

Vs.

1.M/s. Xpro India Ltd. .... Respondents

**Excise Appeal No. 1091 of 2008-SM(BR)**

[Arising out of Order-in-Appeal No. 22/CE/Appl/DLH IV/2008 dated 25.3.2008 passed by the Commissioner of Central Excise (Appeals), Faridabad]

C.C.E., Faridabad ... Appellants

Vs.

2.M/s. Friends Auto (India) Ltd. .... Respondents

**Excise Appeal No. 1092 of 2008-SM(BR) &**
**Excise Cross Objection No. 341 of 2008-SM(BR)**

[Arising out of Order-in-Appeal No. 25/CE/Appl/DLH IV/2008 dated 25.3.2008 passed by the Commissioner of Central Excise (Appeals), Faridabad]

C.C.E., Faridabad ... Appellants

Vs.

3.M/s. Dee Ess Buhin (P) Ltd. .... Respondents

**Appearance**:

Shri S.K. Bhaskar, DR for the Appellants
None for Respondent No. 1, Shri K.L. Handa, Consultant for Respondent No.2 & 3

Date of Hearing/decision : 26.3.2010

**ORAL ORDER NO. 424 - 426/2010-SM(BR)**

**Per M. Veeraiyan**:

The three appeals filed by the Department and Cross Objection filed by M/s. Dee Ess Buhin (P) Ltd. relating to Appeal No. E/1092/2008 involve the same issue and therefore, they are being disposed off by this common order.

2. None appears for the respondent M/s. Xpro India Ltd. inspite of notice.

3. Heard the learned Consultant on behalf of respondents M/s. Friends Auto (India) Ltd. and M/s. Dee Ess Buhin (P) Ltd.

4. Both sides agree that the issue relating to chargeability of interest on differential duty payable on amount collected by issue of supplementary invoices after clearance of goods stand settled by the Supreme Court in the case of CCE Pune vs. SKF India Ltd. reported in 2009 (239) ELT 385 (SC) and the demand of interest would be subject to bar of limitation. It is also held in the said decision that no penalty is imposable.

5. In view of the above, the appeals by the Department are allowed on merits holding that interest shall be liable on differential duty payable on supplementary invoices in respect of said goods. However, such demand shall be reworked subject to bar of limitation and for this purpose, the matter requires to be remanded to the original authority. In view of the above, orders of the Commissioner (Appeals) and orders of original authority set aside and the matter remanded to consider the aspect of time bar in respect of demands made.

5.2 In the nature of case, the question of imposition of penalty does not arise. Therefore, the penalties are set aside. The cross objection No. 341/2008 is basically in support of order of the Commissioner (Appeals) and the same is also disposed of.

6. The appeals and the Cross objection are disposed of in the above terms.

( M. Veeraiyan )
Member(Technical)

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