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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/937 – 938 / 2008 –SM[BR] Date 15/04/2010

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

To :
M/S DEEPAK TRANSFORMERS
F-789-A, ROAD NO. 13,V.K.I, AREA,JAIPUR (RAJ.)

[2] M/S RAJASTHAN TRANSFORMERS & SWITCHGEA
E-346, ROAD NO. 16, V.K.I. AREA JAIPUR [RAJ.]

M/S DEEPAK TRANSFORMERS Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 431 – 432 / 2010 –SM[BR] dated 7.4.2010 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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 937-938 of 2008-SM(BR)

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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. 937 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 70(RKS)/CE/JPR I/2008 dated 17.4.2008 passed by the Commissioner of Central Excise (Appeals), Jaipur I]

M/s. Deepak Transformers — Appellants

Vs.

Commissioner of Central Excise Jaipur — Respondent

Excise Appeal No. 938 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 36(RKS)/CE/JPR I/2008 dated 11.3.2008 passed by the Commissioner of Central Excise (Appeals), Jaipur I]

M/s. Rajasthan Transformers & Swithcgears — Appellants

Vs.

Commissioner of Central Excise Jaipur — Respondent

Appearance:

Shri Atul Gupta, Advocate for the Appellants
Shri S.K. Bhaskar, DR for the Respondent

Date of Hearing/decision : 7.4.2010

ORAL ORDER NO. 431-432/2010 SM(BR)

Per M. Veeraiyan:

Both these appeals involve identical issues and, therefore, the same are being disposed of by this common order.

2. Heard both sides.

3. The appellants supplied excisable goods to customers like State Electricity Board as per contract containing price escalation clause. Subsequently, due to revision in prices, they paid the differential duty on the additional amounts collected. There was no dispute on liability to payment of differential duty. The original authority confirmed recovery of interest with reference to date of clearance of the consignment and due date on which duty ought to have been paid. Original authority also imposed penalty on both the appellants. Commissioner (Appeals) confirmed the order of the

original authority in so far as the same relates to recovery of interest. However, he set aside the penalties on the appellants.

4. Both sides agree that the issue regarding interest liability on price increase effected by issue of supplementary invoices is no more res integra as the same has been settled by the Hon'ble Supreme Court in the case of CCE, Pune vs. SKF Ltd. reported in 2009 (239) ELT 385. However, the learned Advocate for the appellants submits that the interest liability has to be determined with reference to the provisions relating to limitation. Learned DR has submitted that the issue of limitation has not been raised before the authorities below.

5. In view of the above, on merits, I hold that interest on differential duty is payable as held by the Apex Court in the case of SKF Ltd. cited supra. However, the matter has to be reconsidered by the original authority on the plea of time bar. To enable the same, I set aside the orders of the authorities below and remand the matter to the original authority with the direction that the matter should be decided afresh after taking into account the plea of limitation and after affording reasonable opportunity of hearing to the appellants. It is clarified that no views are expressed on the issue of applicability of limitation on the interest liability.

(M. Veeraiyan)
Member(Technical)

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