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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/2433/2007 – SM[BR]   Date 18/05/2010

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

To :
C.C.E. INDORE

MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE   Appellant

Vs

M/S KORES (INDIA) LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 534 / 2010 –SM[BR] dated 21.4.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S KORES (INDIA) LTD.

PLOT NO 6-B, SECTOR I, INDUSTRIAL AREA, PITHAMPUR, DISTT. DHAR (MP)

2. Adv. / Consult SHRI RAMESH NAIR ADV.
LAKSHMI VIHAR, AG-192
SCHEME NO.54, VIJAY NAGAR
INDORE[M.P]

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 Office Copy
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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. 2433 of 2007 (SM)

[Arising out of the Order-in-Appeal No. IND-I/115/2007 dated 24/05/2007 passed by The Commissioner (Appeal-I), Customs & Central Excise, Indore.]

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?	:

CCE, Indore — Appellant

Versus

M/s Kores (India) Ltd. — Respondent

Appearance

Shri I. Baig, Departmental Representative (DR) – for the appellant.

Shri Ramesh Nair, Advocate – for the respondent.

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

DATE OF HEARING : 21/04/2010.

Final Order No. 534/2010-SM(BR) Dated : ____________

Per. Rakesh Kumar :-

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

1.1 The respondent are manufacturers of photocopier machines chargeable to Central Excise Duty. During the period of dispute, they were charging installation charges from the customers @ Rs. 4,000/- (Rupees Four Thousand) per machine, which was part of the retail price. In August 1996, the audit while checking the records of the respondent, found that they are recovering an amount of Rs. 4,000/- per machine as installation charges from the customers, and was of the view that this amount should be part of the assessable value. Accordingly, the respondent were asked to pay an amount of Rs. 3,17,520/- (Rupees Three Lakh Seventeen Thousand Five Hundred Twenty) for period from September 1995 to July 1996, which they paid under protest. Having paid this amount under protest, the respondent filed refund claim on 15th January 1997.

1.2 During the period of dispute several show cause notices on various issues including the issue of inclusion of the installation charges in the assessable value, had been issued to the Respondent. One group of show cause notices was decided by the Commissioner vide order No. 229 to 243/COMMR/CEX/97 dated 31st October 1997, wherein the Commissioner allowed certain deductions from the assessable value including the deduction of installation charges of Rs. 4,000/- per machine. However, prior to the order dated 31^{st} October 1997 of Commissioner, the Jurisdictional Assistant Commissioner, while finalizing the provisional assessment vide his order-in-original dated 16^{th} January 1997, had held the installation charges to be includible in the assessable value. Since the Assistant Commissioner's order dated 16^{th} January 1997 had not been set aside, notwithstanding the Commissioner's order dated 31^{st} October 1997 allowing the deduction, the Jurisdictional Range Superintendent issued a show cause notice dated 29^{th} May 1998 demanding Central Excise Duty amounting to Rs. 9,46,907/- (Rupees Nine Lakh Forty Six Thousand Nine Hundred and Seven) for period from January 1993 to September 1997 for non-inclusion of the installation charges in the assessable value. The amount demanded by this show cause notice also included the amount of Rs. 3,17,520/- already paid by the respondent. The show cause notice dated 29^{th} May 1998 was decided by the Jurisdictional Deputy Commissioner vide order-in-original dated 29^{th} November 2002 by which the demand proceedings were dropped. Thereafter, the refund claim which had been filed on 15^{th} January 1997 was sanctioned to the respondent on 6^{th} March 2007. This order, however, did not say anything about the interest. The respondent filed an appeal before the Commissioner (Appeals) against order-in-original dated 6^{th} March 2007 passed by the Deputy Commissioner seeking interest for the period of delay as per the provisions of Section 11BB. The Commissioner (Appeals) vide order-in-appeal No. IND-1/115/2007 dated 24^{th}

May 2007 allowed the appeal ordering interest from 16th April 1997 onward till the payment of refund amount, as the refund claim has been filed on 15th January 1997. It is against this order of the Commissioner (Appeals) that the present appeal has been filed by the Revenue.

2. Shri I. Baig, learned Departmental Representative reiterating the grounds of appeal in the Revenue's appeal pleaded that when the refund claim had been filed on 15th January 1997, the issue had not been decided and as such the refund claim was pre-mature, that the issue regarding inclusion of installation charges in the assessable value had first been decided against the respondent by the Jurisdictional Assistant Commissioner vide his order dated 16th January 1997, that it is only subsequently vide order-in-original dated 29th November 2002, that the duty demands based on the Assistant Commissioner's order dated 16th January 1997 was dropped, as the Commissioner in the meantime vide his order dated 31st October 1997 had held that the installation charges are not includible in assessable value, that since the issue was decided in the Respondent's favour only on 29th November 2002, they would become eligible to file the refund only from this day and the Department's liability for interest would be only from the date, immediately following the date of expiry of three months from 29th November 2002, that the Commissioner (Appeals) has wrongly allowed the interest from 16th April 1997, that is on expiry of three months from the

date of filing of refund claim and that in view of this, the impugned order is not correct.

3. Shri Ramesh Nair, Advocate, the learned Counsel for the respondent, pleaded that the respondent had paid the duty whose refund has been sanctioned to them on 24th August 1996 on the basis of an audit objection informed to them, that duty had been paid under protest, that when the issue was not decided they filed the refund claim on 16th January 1997, that no communication regarding rejection of the refund claim was received, that the refund claim was finally sanctioned only on 6th March 2007, that in view of this as per the provisions of Section 11BB, the Department's interest liability would start on expiry of three months from the date of filing of refund claim and in view of this, the Commissioner (Appeals) has rightly allowed the interest for the period from 16th April 1997, till the date of payment and that in view of this, there is no merit in the Revenue's appeal.

4. I have carefully considered the submissions from the sides and perused the records.

4.1 There is no dispute about the fact that the refund claim had been filed on 16th January 1997 and the same was sanctioned only vide order-in-original No. 316/DC/Refund/2007 dated 6th March 2007. It is not the department's case that the refund claim had been returned or rejected as pre-mature. What had been decided by the Assistant Commissioner vide order-in-original dated 6^{th} March 2007 was the refund claim filed on 15^{th} January 1997. As per the provisions of Section 11BB if any duty to be refunded under Section 11B (2) to any applicant is not refunded within three months from the date of receipt of application under Section 11B (1) of that Section, there shall be paid to that applicant, interest at such rate, as may be notified by the Central Government on such duty, from the date immediately after expiry of three months from the date of receipt of said application till the refund of such duty. In view of clear provisions of Section 11BB, the interest liability of the department starts immediately on expiry of period of three months from the date of filing of application. Since, in this case the refund claim had been filed on 15^{th} January 1997, the interest liability of the department started from 16^{th} April 1997 and, therefore, the Commissioner (Appeals) had rightly allowed interest on the refund amount from 16^{th} April 1997 till the date of payment. In view of this, I do not find any infirmity in the Revenue's appeal. The Revenue's appeal is dismissed.

(Dictated and pronounced in open court)

(Rakesh Kumar)
Member (Technical)

PK