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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/3083/2010 – SM[BR] E / STAY /2854 / 2010-SM[BR] Date 15/12/2010

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

To :
M/S DANISH PVT. LTD.

F-1-679-680, RIICO INDUSTRIAL AREA, SITAPURA,
JAIPUR (RAJ.)
M/S DANISH PVT. LTD.

Appellant
Vs
C.C.E. JAIPUR I
Respondent

I am directed to transmit herewith a certified copy of **Final order No**.1423/2010-SM[BR]&S/676/2010dated 26.11.2010 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
MR.SANJEEV KUMAR MISHRA

166, BLOCK A, MODI NAGAR, AJMER ROAD, PURANEE, CHUNGEE, JAIPUR-302019

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 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No. 3083 of 2010-SM(BR)
Excise Stay Application No. 2854 of 2010-SM(BR)

[Arising out of Order-in-Original No. 20/2010 (CE) dated 22.6.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur I]

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?	:	No
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?	:	NO

M/s. Danish Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise
Jaipur I — Respondent

Appearance:

Shri Sanjeev Kr. Mishra, Consultant for the Appellants
Shri K.P. Singh, SDR for the Respondent

Date of Hearing/decision : 26.11.2010

Final

ORAL ORDER NO. 1423/2010 SM (BR) &
S-676/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner No. 20/2010 (CE) dated 22.6.2010 ordering recovery of interest amounting to Rs.4,93,840/-.

2. Heard both sides on the stay petition for a while and pre-deposit is waived and appeal itself is taken up for final hearing.

3. Both sides agree that the matter regarding liability of interest on differential duty paid consequent to revision of prices based on price escalation clauses in the contract stands settled by Hon'ble Supreme Court in the case of CCE, Pune vs. SKF India Ltd. reported in 2009 (239) ELT 385 (SC) and in the case of CCE vs. International Auto Ltd. reported in 2010 (250) ELT 3 (SC).

4. Learned Consultant for the appellants, however, submits that the substantial part of demand is hit by time bar. He submits that limitation aspect was not raised before the original authority and being the question of law, they are raising it before the Tribunal for the first time. He relied upon the Tribunal's decision in the case of KEC International vs. CCE, Jaipur reported in 2009 (96) RLT online 48 (CESTAT – Delhi) and in the case of CCE vs. Sambhav Conductors Pvt. Ltd. Final Order No. 1206 /2009 dated 15.9.2009 in Appeal No. 2273/2007 and decision of the Tribunal in the case of Rajasthan Transformers & Switchgears vs. CCE, Jaipur reported in [2010 (253) ELT 319 (Tri-Del) and contended that the demand is time barred.

5. Learned SDR relies on the decision of the Tribunal in the case of PCM Cement Concrete Pvt. Ltd. vs. CCE Siiliguri reported in [2010 (256)

ELT 99 (Tri-Kol)] and submits that the demand of differential duty is not disputed and therefore, the question of disputing interest on amount not disputed does not arise.

6. I have carefully considered the submissions from both sides. As regards the applicability of bar of limitation for demand of interest, the the Division Bench of the Tribunal in the ICEC Ltd. vs. CCE Jaipur has clearly held that the limitation requires to be looked into. In the light of the above, the decision of the Tribunal in the case of PCM Cement Concrete Pvt. Ltd. by Single Member Bench may not deserved to be followed.

7. In view of the above, appeal is disposed of holding that on merit, the interest is payable on the differential duty paid consequent to ~~consequent~~ ~~to~~ collection of differential value due to price escalation . However, as the limitation aspect has not been raised before the Commissioner (Appeals), since limitation involves mixed question of law and facts, the matter deserves to be sent back for fresh consideration. To enable the same, the order of the Commissioner is set aside and the matter remanded to the Commissioner (Appeals) to consider the question of applicability of limitation.

8. The appeal is allowed by way of remand. Stay petition is also disposed of.

(M. Veeraiyan)
Member(Technical)

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