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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/506 /2009 – SM[BR]

Date 15/12/2010

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

To :
C.C.E. ROHTAK
SCO NO,6 SECTOR 1, ROHTAK.

C.C.E. ROHTAK — Appellant

Vs

M/S VAE VKN INDUSTRIES PVT. LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1432 / 2010-SM[BR] dated 18.10.2010 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 VAE VKN INDUSTRIES PVT. LTD.
   42, MILESTONE, G.T.ROAD, BAHALGARH, SONEPAT.
2. Adv. / Consult SHRI V.LAKSHMIKUMARAN ADV.
   B-6/10, SAFDARJUNG ENCLAVE 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 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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal No.506/09-SM

(Arising out of order in appeal No.256/ANS/RTK/08 dated 20.11.08 passed by the Commissioner of Central Excise (Appeals), Delhi-III)

Date of Hearing: 18.10.2010

For approval and signature:

Hon'ble Shri Ashok Jindal, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982?

2. Whether it should 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 Departmental Authorities?

CCE, Rohtak	Appellants
Vs	
M/s VAE VKN Industries Pvt Ltd	Respondent

Appeared for the Appellant: Shri S.K. Bhaskar, DR
Appeared for the Respondent: Shri B.L. Narsimhan, Advocate

Coram: **Hon'ble Shri Ashok Jindal ,Member (Judicial)**

Final ORDER 1432/2010 SM(BR)

Per Ashok Jindal:

The Revenue has filed this appeal against the impugned order wherein the Commissioner (Appeals) has confirmed the demand of interest on supplementary invoices issued later on escalation of prices by the respondents.

2. The facts of the case are that during the course of scrutiny of records, it came to the notice of the audit party that during the period 2002-03 to 2005-06, the respondent has paid the differential duty to supplementary invoices issued from time to time but the respondent did not pay the interest set out. A show cause notice was issued on 7.5.2007 for the payment of interest as per chart detailed below:-

Year	Amount of duty paid	Interest	Annexure
2002-03	2,53,761	46,337	A
2003-04	4,15,918	41,020	B
2004-05	4,08,696	19,918	C
2005-06	14,68,432	7,70,933	D
2006-07 (Upto Jan 07)	5,29,278	94,169	E
Total	30,76,085	9,72,377	

3. The learned DR for the appellants has stated that respondent has contravened the provisions of 8(1) and Section 11A(2B) as they have not paid the interest on the Central Excise duty paid by them through supplementary invoices during the period 2002-03 to 2006-07. The demand of interest was confirmed alongwith penalty but on appeal by the respondent, the Commissioner (Appeals) dropped the demand following the decision of the Bombay High Court in the case of Rucha Engg Pvt Ltd reported in 2008 (223) ELT 161 Bombay wherein the Bombay High Court has held that payment of interest does not arise as duty was paid as soon as it was learnt that it was payable. Aggrieved from the said order, the Revenue is in appeal.

4. The learned DR submitted that this issue has been settled by the Hon'ble Apex Court in the case of M/s SKF Ltd reported in 2009 TIOL 82 SC

wherein the Hon'ble apex Court on similar facts has held that interest is payable on the duty on supplementary invoices due to escalation of prices having retrospective effect. Hence the impugned order is to be set aside.

5. On the other hand, learned Advocate for the respondent appearing for the respondent submitted that in this case, the most of the demand is barred by limitation i.e. demand for the period 2002-03 to 2005-06. He submitted that the respondent is filing their their ER-I returns regularly showing the payment of duty made on the supplementary invoices but Department has not taken any steps to recover the interest. Hence the extended period is not invokable in this case. In the show cause notice, there is no allegation against the respondent for mis-declaration, collusion or fraud. Hence the extended period is not invokable. He fairly agreed to the interest which is within the period of limitation. In support of his contention, he place reliance in the case of CCE Jalandhr Vs Krishna Engg Works Ltd reported in 2000 (100) RLT 296 (CESTAT DEL) wherein this Tribunal has held that in the absence of mis-statement , the differential duty paid on invoices during the period 16.9.03 to 13.8.04, the show cause notice issued for reversal of interest is time barred.

6. Heard both sides. Considering the fact that in this case, the only issue is that whether the interest on differential duty paid on the invoices on supplementary invoices raised on escalation prices is payable or not. This issue has already been settled by the Hon'ble Apex Court in the case of M/s SKF Ltd wherein it has been held that in such situation, the assessee has to pay interest on differential duty paid on

supplementary invoices. But whether the extended period is invokable or not, it is to be seen in the circumstances of the case.

7. I have gone through the facts of the case. It is admitted fact that the respondent has paid the differential duty on supplementary invoices regularly and has shown the same in their ER-I returns which were filed regularly before the department. The same are available on record. In such circumstances, whether the extended period is invoked or not, the Tribunal in the case of Krishna Engg has held that extended period is not invokable where the payment of interest pertains to period beyond one year to start period of limitation. In this case, the demand has been raised from the period 2002-03 to 2006-7 and the show cause notice has been issued on 7.5.007. Following the decision of Krishna Electronics supra, the extended period beyond the statutory period of one year is not invocable in this case. Accordingly, demand of interest on differential duty prior to April 2006 is barred by limitation and demand of interest for the period April 2006 to January 2007 is payable by the respondent. With these observations, the appeal is disposed of.

(ASHOK JINDAL)
Judicial Member

MPS*