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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/513 /2009 – SM[BR]   Date **23/12/2010**

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

To :
M/S HELLO MINERALS WATER PVT. LTD.
D-18, SECTOR-3, NOIDA.

M/S HELLO MINERALS WATER PVT. LTD. Appellant

Vs

C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1466 / 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
C.C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-
201307
2. Adv. / Consult
MR.S.D.GAUR
SB-108, SHASTRI NAGAR,
GHAZIABAD.
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

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

E/Appeal No.513/2009-SM

(Arising out of order in appeal No.131/CE/AF/Noida/08 dated 31.10.2008 passed by the Commissioner of Central Excise (Appeals), Noida)

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?

M/s Hello Minerals Water Pvt Ltd — Appellants

Vs

CCE, Noida — Respondent

Appeared for the Appellant: Shri S.D. Gaur, Consultant
Appeared for the Respondent: Shri S.K. Bhaskar, DR

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

Final ORDER 1466/2010 SM(BR)

Per Ashok Jindal:

The appellant has filed this appeal against the impugned order confirming the penalty under Rule 25 of Central Excise Rules, 2002. The facts of the case are that the appellants are manufacturer of mineral water and filing their returns regularly but during the period February-March, 2006, they could not pay the duty in time and it was only on 7th October 2006, that they paid duty alongwith interest at the rate of 11%. Later on, they realized that interest is to be paid at 13%. They paid the differential interest on 10th November, 2006. Thereafter, a show cause notice was issued to the appellants for contravening the Rule 8(3)A of Central Excise Rules 2002 for not paying the duty in time and as per Rule 8(3) for delayed payment, the appellant is required to pay the duty through PLA account. Accordingly, a demand of duty was confirmed by the adjudicating authority alongwith penalties under Section 11AC and Rule 25 of Central Excise Rules.

2. On appeal before the Commissioner (Appeals), the duty demand was dropped holding that it will be an exercise in futile and penalty under Section 11AC was also dropped holding that there is no ingredient of Section 11AC such as fraud, collusion, willful misstatement suppression of facts. Hence penalty under Section 11AC was dropped but the penalty under Rule 25 of Central Excise Rules, 2002 was confirmed.. Aggrieved from the said penalty, the appellant is in appeal.

3. It is the contention of the appellant that the penalty under Rule 25 cannot be imposed on the appellant in the facts of the case as they have paid duty alongwith interest and differential interest also thereon. In the show cause notice, the proposal is to penalize under Rule 27 and not under Rule 25. Hence the penalty under Rule 25 is not leviable in the facts of the case.

4. On the other hand, learned DR submitted that the appellant has contravened the provision of Rule 8(3) of the Central Excise Rules, 2004 for contravention of provisions of these Rules, the appellants are liable to pay the penalty.

5. Heard both sides. On careful examination of both the sides, I find that in the show cause notice, the proposal of penalty under Rule 27 was of Central Excise Act 2002 was made. But both the lower authorities have confirmed penalty under Rule 25 which is beyond the scope of the show cause notice. This Tribunal in a number of cases has held that in such a situation, the only penalty leviable is under Rule 27 of the Central Excise Rules, 2002 which is maximum of Rs. 5,000/-. In this case, I have gone through the facts. In the facts and circumstances of the case, penalty leviable is under Rule 27 of Central Excise Rules 2002 only. Accordingly, the impugned order is set aside but the penalty under Rule 27 of Central Excise Rules 2002 is confirmed to Rs. 2,000/- only. With these observations, the appeal is disposed of.

(ASHOK JINDAL)
Judicial Member

MPS*