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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/545 /2008,637 /2008 – SM[BR] Date 12/01/2010

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH — Appellant
Vs
M/S A.B.TOOLS LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 67 – 68 / 2010 –SM[BR] dated 6.1.2010 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 A.B.TOOLS LTD.

   PLOT NO. 7-8,SECTOR-3, PARWANOO,DISTT. SOLAN (H.P.)
2. Adv. / Consult

   NONE;-----------------

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)

2. M/S ANAND NISHIKAWA CO. LTD.
CHANDIGARH AMBALA ROAD,
LALRU (PB)

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

**COURT-III**

**Date of hearing/decision: 6.1.2010**

**Central Excise Appeals No.545 & 637 of 2008-SM**

Arising out of the order in appeal No.67-69/CE/CHD/2008 dated 21.1.2008 passed by the Commissioner (Appeals), Central Excise, Chandigarh.

For Approval and Signature:

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

| | | |
|---|---|---|
| 1 | Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | Yes |
| 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 |

C.C.E., Chandigarh ... Appellant

Vs.

M/s A.B. Tools Ltd. .... Respondents
M/s Anand Nishikawa Co. Ltd.

Appearance:

Shri S. N. Srivastava, Authorized Departmental Representative (SDR) for the Revenue and none for the respondents

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 67-68/2010 SM(BR)

Per M. Veeraiyan:

These two appeals by the Department arise out of a common order in appeal passed by the Commissioner (Appeals) and involved a common issue. Accordingly, the same are disposed of by this common order.

2. Heard the learned SDR. None appears for the respondents in spite of notice.

3. The respondents cleared the goods on payment of duty and subsequently revised prices and collected differential price by issue of supplementary invoices. The original authority demanded interest with

reference to the date of clearance of goods under Section 11AB of the Central Excise Act, 1944. The Commissioner (Appeals) held that the parties were not aware at the time of first clearance of the goods that the value would be enhanced by the purchaser and accordingly, set aside the orders of the original authority.

4. Learned SDR submits that the issue stands decided in favour of the Revenue by the judgment of the Hon'ble Supreme Court in the case of C.C.E., Pune vs. S.K.F. India Ltd. - 2009 (239) ELT 385 (SC).

5. I have carefully gone through the submissions of the learned SDR and perused the records. The issue of liability to interest on price increase effected through supplementary invoices has been settled by the Hon'ble Supreme Court in the case of SKF India Ltd. cited supra. The relevant portion of the judgment is reproduced below:

> ***"14. We are unable to subscribe to the view taken by the High Court. It is to be noted that: the assessee was able to demand from its customers the balance of the higher prices by virtue of retrospective revision of the prices. It, therefore, follows that at the time of sale the goods carried a higher value and those were cleared on short payment of duty. The differential duty was paid only later when the assessee issued supplementary invoices to its customers demanding the balance amounts. Seen thus it was clearly a case of short payment of duty though indeed completely unintended and without any element of deceit etc. The payment of differential duty thus clearly came under sub-section (2B) of Section 11A and attracted levy of interest under Section 11AB of the Act".***

6. In view of the above, the orders of the Commissioner (Appeals) cannot be sustained. Accordingly, the same are set aside and the orders of the original authority demanding interest are restored.

7. The appeals by the Department are allowed.

(M. Veeraiyan)
Member (Technical)

scd/