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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/2085/200 , E / 2986 / 2007 , E / 3145 / 2007 -SM[BR] Date 21/01/2010

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

To :
1. M/S RAJASTHAN TRANSFORMER & SWITCHGEARS
C-174, ROAD NO. 16, V.K.I. AREA, JAIPUR

[2] M/S RAJASTHAN TRANSFORMER & SWITCHGEARS
C-174, ROAD NO. 16 , V.K.I. AREA, JAIPUR
[3] M/S FATEHPURIA TRANSFORMER AND
SWICHGEAR [P] LTD.
P.O. MACHWA , JAIPUR

M/S RAJASTHAN TRANSFORMER & SWITCHGEARS — Appellant
Vs
C.C.E. JAIPUR I — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 97 – 99 / 2010 –SM[BR] dated 14.1.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ 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 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)

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

Excise Appeal No. 2085 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 100(GRM)/CE/JPR-I/2007 dated 19.04.2007 passed by Commissioner (Appeals I) Central Excise, Jaipur-I]

M/s. Rajasthan Transformer & Switchgears Appellants

Vs.

Commissioner of Central Excise Respondent
Jaipur

Excise Appeal No. 2986 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 268(GRM)/CE/JPR-I/2007 dated 27.08.2007 passed by Commissioner (Appeals I) Central Excise, Jaipur-I]

M/s. Rajasthan Transformer & Switchgears Appellants

Vs.

Commissioner of Central Excise Respondent
Jaipur

Excise Appeal No. 3145 of 2007-SM(BR)

[Arising out of Order-in-Appeal No. 300(RKS)/ST/JPR-I/2007 dated 8.10.2007 passed by Commissioner (Appeals) Central Excise, Jaipur]

M/s. Fatehpuria Transformer & Switchgears(P)Ltd. Appellants

Vs.

Commissioner of Central Excise Respondent
Jaipur

For approval and signature:

Hon'ble Mr. M. Veeraiyan, 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?	:	Yes
2. Whether it should be released under Rule 27 of the 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

Appearance:

Shri Atul Gupta, Company Secretary for the Appellants
Shri I.Baig, SDR for the Respondent

Date of Hearing/decision : 14.1.2010

ORAL ORDER NO. 97-99/2010 SM(Br)

Per M. Veeraiyan:

Appeal Nos. E/2085 & 2986/2007 are filed by M/s. Rajasthan Transformer & Switchgears and Appeal No.3145/07 is filed by M/s. Fatehpuria Transformer & Switchgears(P)Ltd. All these appeals involve a common issue and, therefore, they are being dealt with by this common order.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants supplied excisable goods on the basis of contract containing price escalation clause. Subsequently, due to revision in prices, the appellants paid the differential

duty. There is no dispute about the liability of the appellants to pay the differential duty. The original authority ordered recovery of interest with reference to date of clearance of the consignment and the due date by which the duty ought to have been paid. Commissioner (Appeals) has upheld the orders of the lower authority.

4. Learned Company Secretary, Shri Atul Gupta while agreeing that the issue of the liability to interest has been settled by the Hon'ble Supreme Court in the case of CCE, Pune vs. SKF Ltd. reported in [2009 (239) ELT 385 (SC)] submits that demand for interest should be subject to limitation. He relies on the decision of the Tribunal in the case of Collector of Customs, Madras vs. T.V.S. Whirlpool Ltd. reported in [1996 (86) ELT 144] wherein it has been held that the demand for interest shall be governed by the limitation as applicable to demand of duty, short levied, not levied or erroneously refunded. He also submits that the said decision of the Tribunal was challenged before the Hon'ble Supreme Court and the appeal filed by the department has been dismissed with the following observations:-

> "It is only reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the claim for interest thereon. We find no merit in the appeals and they are dismissed with cost."

5.1 Learned SDR submits that the issue regarding interest liability on price increase is no more res integra having been decided by the Hon'ble Supreme Court in the case of CCE Pune vs. SKF Ltd. reported in [2009 (239) ELT 385 (SC)]. He also submits that there is no limitation provided for in respect of demand of interest.

5.2. He relies on the decision of the Tribunal in the case of KEC International Ltd. vs. CCE, Jaipur reported in [2010 (96) RLTONLINE 48 (CESTAT-DEL)] wherein it has been held that point of limitation being a mixed question of law and facts, it would be appropriate to remand the impugned order to the original authority permitting the appellants to raise the point of bar of limitation. He also relies on the decision of the Tribunal in the case of CCE Jaipur II vs. Sambhav Conductors Pvt. Ltd. vide Final Order No. 1206/2009 dated 15.9.2009 in Appeal No. 2273/2007.

6. I have carefully considered the submissions from both sides and perused the records. There is no dispute about the differential duty payable due to price escalation. In fact the same stands paid. The dispute whether interest is liable to be paid also stands settled by the Hon'ble Supreme Court in SKF Ltd. cited (supra). The dispute relates to whether in determining the liability to interest, the bar of limitation will apply or not. Both sides agree that the issue of bar of limitation was not raised before the original authority and before the Commissioner (Appeals). Learned Company Secretary seeks an opportunity for presenting the case and therefore, seeks remand. Learned SDR seeks final decision by the Tribunal. In substantially similar circumstances, the Tribunal in the case of KEC International Ltd. has held that limitation being a mixed question of law and facts, it would be appropriate that the matter goes to the original authority so that both sides have opportunity to present the rival contentions.

8. In view of the above, I set aside the order of the Commissioner (Appeals) and that of the original authority and remand the matter to the original authority to consider the applicability of bar of limitation in relation to recovery of interest and pass appropriate orders as per law after granting reasonable opportunity of hearing to the appellants.

(M. Veeraiyan)
Member(Technical)

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