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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/1917/2009 – SM[BR] & E/ STAY / 1971 / 2009 –SM[BR] Date 11/02/2010

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

To :
M/S CROMPTON GREAVES LTD.
PLOT NO. T-1 TO T-5, AKVN INDUS. AREA,
MALANPUR-477116,
DISTT. BHIND (M.P.)

M/S CROMPTON GREAVES LTD. Appellant
Vs
C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order** No.194 / 2010-SM[BR]& S/ 79 /2010dated 1.2.2010 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. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult
   MR.RANDHIR SINGH,ADVOCATE
   37, LOWER GROUND FLOOR, WORLD TRADE CENTRE, BARAKHAMBA AVENUE, N 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 Stay Application No. 1971 of 2009-SM(BR)
Excise Appeal No. 1917 of 2009-SM(BR)

[Arising out of Order-in-Appeal No. IND-I/28/2009 dated 15.5.2009 passed by Commissioner of Customs & Central Excise (Appeals I), Indore]

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?	:	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?	:	Yes

M/s. Crompton Greaves Ltd. — Appellants

Vs.

Commissioner of Customs & Central Excise, Indore — Respondent

Appearance:

None for the Appellants
Shri S.K. Bhaskar, DR for the Respondent

Date of Hearing/decision : 1.2.2010

ORAL ORDER NO. 194/2010 SM(BR) + S-79/2010 SM(BR)

Per M. Veeraiyan:

None appeared on behalf of the appellant inspite of notice. When the matter was called for the first time as none appeared the matter was passed over, and again when for a second time the matter was called nobody appeared. Learned DR submits that the matter stands fully covered by the decision of the Hon'ble Supreme Court.

2. In view of the above, the stay petition is disposed of and the appeal is taken up for final disposal.

3. The facts of the case are that the appellants is a manufacturer of transformers and parts. They supplied to Electricity Boards in terms of contracts containing the price variation clauses. The differential duty became payable due to finalisation of price by way of enhancement and the same stands paid and there is no dispute about the liability to pay the duty. The dispute relates to whether interest should be demanded with reference to the date of removal of goods or with reference to the date of finalisation of price. The issue stands settled by the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Pune vs. SKF Ltd. reported in 2009 (239) ELT 385 in the following terms:-

> **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.

4. In view of the above, the appeal contesting the demand of interest amounting to Rs.7,004/- is rejected.

5. Stay petition is also disposed of.

(M. Veeraiyan)
Member(Technical)

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