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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/654 /2008 & E / 667 / 2008 & E / 674 / 2008 -SM[BR] Date 05/03/2010

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

To :
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD,
HARYANA 121001.

C.C.E. DELHI IV — Appellant

Vs

M/S A.R.INDUSTRIES — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 271 – 273 / 2010 -SM[BR] dated 26.2.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S A.R.INDUSTRIES
14/6, MATHURA ROAD,
FARIDABAD.

[2] M/S CEMCON TRACK INDUSTRIAL VILLAGE; MUDLANA PANIPAT ROAD GOHANA, DISTT- SONEPAT

[3] M/S MODERN TRANSFORMER E-94, BAPI INDUSTRIAL AREA, DAUSA [RAJ.]

2. Adv. / Consult SHRI BIPIN GARG ADV,
B-1/1289-A, VASANT KUNJ NEW DELHI
[2] SHRI K.L. HANDA CONSULTANT
689 SECTOR-16, FARIDABAD

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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

COURT NO. II

Excise Appeal No. 654 of 2008-SM

(Arising out of Order-in-Appeal No. 1/CE/Appl/DLH-IV/2008 dated 17.1.2008 passed by the Commissioner (Appeals), Central Excise, Delhi-I)

CCE, Delhi-IV — Appellant

Vs.

M/s A.R. Industries — Respondent

Appearance:

Appeared for Appellant : Shri I. Baig, SDR
Appeared for Respondent : Shri K.L. Handa, Consultant

Excise Appeal No. 667 of 2008-SM

(Arising out of Order-in-Appeal No. 498/KKG/RTK/2007 dated 12.12.2007 passed by the Commissioner (Appeals), Central Excise, Delhi-III)

M/s Cemcon Track Industries — Appellant

Vs.

CCE, Rohtak — Respondent

Appearance :

Appeared for Appellant - Shri Atul Gupta, C.S.
Appeared for Respondent - Shri V.K. Saxena, Jt. CDR

Excise Appeal No. 674 of 2008-SM

(Arising out of Order-in-Original No.3/2008 dated 13.2.2008 passed by the Commissioner, Central Excise, Jaipur)

M/s Modern Transformer Appellant

Vs.

CCE, Jaipur Respondent

Appearance :

Appeared for Appellant - Shri Atul Gupta, C.S.
Appeared for Respondent - Shri S.K. Bhaskar, DR

Date of Hearing : 22.2.2010

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER

Final Order No. 271 - 273/2010 SM (BR) dated............

Per D.N. Panda:

In all these three appeals, the ld. Counsel appearing preliminarily submits that it was not known to anybody about arise of ~~to~~ liability on supplementary invoice till judgement in **SKF India Ltd.** came up. The assessees were under bonafide belief that the demand arising under supplementary invoices shall not call for payment of interest. When such a factual aspect was known to Revenue the limitation for recovery was also well known to that Authority. But unfortunately the limitation aspect has not been dealt by both the authorities below. Both ld. Counsels submit today that recently there was matter before Court No. 1 of Tribunal in the case of **KEC International Ltd. Vs. CCE** reported in 2010 (96) RLTONLINE 48 (CESTAT-Del.) granting fair opportunity of hearing on limitation issue. That judgement was made by Tribunal on

14.10.09. Shri Handa appearing for the respondent in Appeal Case No. E/654/08 of M/s A.R. Industries filed by Revenue submits that the demand is very negligible towards interest for which Revenue's appeal should be dismissed in exercise of discretion by Tribunal.

2. Revenue's submission today is that when liability is determined at a future date but reckoning such liability from the date of removal of excisable goods, liability is said to have been accrued from that date calling for interest liability said to have arisen for non-payment of duty liability in terms of supplementary invoices. Therefore limitation does not apply.

3. Heard both sides and perused the record.

4. At the very outset, it can be said that the discretion is to be exercised bonafide and not in arbitrary manner. When a question of law arises for decision, quantum of demand is immaterial because of far reaching consequence of a judgment. Therefore it is not desirable to dismiss the appeal of Revenue.

5. When the ld. Counsels suggest that there should be a judicial discipline following the decision of Court No. 1 in the case of M/s KEC International Ltd. to send ~~retest~~ the matter on limitation for retest of the issue, they ~~should~~ shall not be deprived of justice. There is force to consider their prayer for appropriate resolution of the dispute in the light of the decision made in the case of M/s KEC International (supra). Shri Handa having repeatedly submitted that no one should be

deprived of process of justice by any discriminatory approach, it has become necessary to send all the appeals to the ld. Adjudicating authority to have advantage of reading of the decision of this Tribunal in the case of M/s KEC Industries Ltd. (supra) and decide the issue both on limitation and appropriateness of calling for demand of interest.

6. All parties are entitled to fair trial in the remand proceeding to adduce the evidence and plead on the question of law as that shall be permissible to them.

7. In the result, all the three appeals are remanded to the respective adjudicating authorities.

(Dictated & pronounced in open Court)

(D.N. PANDA)
JUDICIAL MEMBER

RM