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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/638 /2008 – SM[BR] Date 08/03/2010

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 AMAN ENTERPRISES Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 285 / 2010 –SM[BR] dated 3.3.2010 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 AMAN ENTERPRISES
PLOT NO.2, D.K.ROAD,
MUJESSAR,
FARIDABAD (HARYANA)

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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 3.3.2010

Central Excise Appeal No.638 of 2008-SM

Arising out of the order in appeal No.02/CE/Appl/DLH-IV/2008 dated 14.2.2008 passed by the Commissioner, Central Excise (Appeals), Delhi I.

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., Delhi IV ... Appellant

Vs.

M/s Aman Enterprises ... Respondent

Appearance:

Shri I. Baig , Authorized Departmental Representative (SDR) for the Revenue
None for the respondent

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

Oral Order No. 285/2010 SMBR

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 02/CE/Appl/DLH-IV/2008 dated 14.2.2008

2. Heard the learned SDR for the Department. None present on behalf of the respondent. However, a communication dated nil has been received in the Tribunal on 18.12.2009 seeking decision of the appeal on merits.

3. The relevant facts, in brief, are that the respondent, a manufacturer of motor vehicle parts cleared the goods on payment of duty and subsequently, revised prices and raised supplementary invoices and collected the

differential prices from the buyers. They paid the differential duty of Rs.3,66,121/- due to price revision but did not pay interest amounting to Rs.23,399/-. Show cause notice was issued for confirming the duty deposited by the respondent and for recovering interest and proposing imposition of penalty. Commissioner (Appeals), on appeal by the party, set aside the order of the original authority and allowed the appeal with consequential relief.

4. Learned SDR submits that the issue regarding the interest liability stands settled by the Hon'ble Supreme Court in the case of C.C.E., Pune vs. S.K.F. India Ltd. reported in [2009 (239 ELT 385 (SC)].

5. I have carefully considered the case records and the submissions by the learned SDR. It is noticed that the respondent issued supplementary invoices due to subsequent price revision in respect of the goods supplied by them. It is settled by the Hon'ble Supreme Court that in such situation involving collection of differential prices by issue of supplementary invoices, the goods carried a higher value at the time of sale of the goods. Such cases are clearly ~~are~~ cases of short payment of duty though completely unintended and without any element of deceit. The relevant portion of the judgment of the Hon'ble Supreme Court 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 respondent was required to pay the differential duty along with interest (which they have paid before issue of show cause notice) as confirmed by the original authority. It is also clear that in such a situation, the question of imposition of penalty does not arise. Under these circumstances, the order of the Commissioner (Appeals) in setting aside the order of the original authority in *toto* is not warranted and

the order of the original authority is restored in so far as the same relates to confirmation and appropriation of duty paid by the respondent and order for recovery of interest. However, while restoring the order of the original authority, penalty imposed by him is set aside.

7. Appeal by the Department is disposed of on the above terms.

(M. Veeraiyan)
Member (Technical)

scd/