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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/48 /2005 - EX[DB] Date 18/11/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi
To :
M/S KIRLOSKAR BATTERIES LTD.
B-9, SITE B, INDL. AREA,
SURAJPUR (U.P.)

M/S KIRLOSKAR BATTERIES LTD. Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 795 **2010 EX[DB]** dated 03.10.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
MR.S.D.GAUR
SB-108, SHASTRI NAGAR, GHAZIABAD.
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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file
16 Hon'ble President.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision 03.10.2010

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, 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

Excise Appeal No. 48 of 2005

[Arising out of order in appeal No. 302-CE/APPL/NOIDA/2004 dated 30.09.2004 passed by the Commissioner (Appeals), Central Excise, Noida].

M/s Kirloskar Batteries Limited — Appellants

Vs.

CCE, Noida — Respondent

Appearance: Rep. by Sh. S. D. Gaur, Advocate for the appellants.
Rep. by Sh. R.K. Verma, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL Order No 795/10-Ex

Per: Justice Sh. R.M.S. Khandeparkar:

Heard the learned Advocate for the appellants and DR for the respondent.

2. This appeal arises from order dated 30.09.2004 passed by the Commissioner (Appeals) Noida. By the impugned order, the lower appellate authority has disposed of the appeal filed by the revenue while confirming the order of the original authority but has proceeded to impose penalty of Rs. 2 lakh.

3. The original authority while dealing with the proceedings arising out of show cause notice dated 27.11.2002 issued to the appellants had dropped the proceedings holding that the demand sought to be raised against the appellants for Rs.9,36,760/- was not justified. The lower appellate authority has held in the impugned order that he did not find any infirmity with the order of the adjudicating authority with regard to the said finding. However, having said so, the lower appellate authority has proceeded to impose penalty under Rule 25 of the Central Excise Rules, 2001 read with Section 11AC of the Central Excise Act, 1944 for contravention of the provisions of Rule 8(1) of the erstwhile Rule 2001 as they have defaulted in fortnightly payment of duty.

4. Perusal of the show cause notice and orders passed by the lower authorities, it is apparent that the only adjudication which was called for in the proceedings in terms of the show cause notice was that the appellants had utilized cenvat credit, towards the payment of duty, but such credit had been accumulated during the period subsequent to the period for which amount of duty was sought to be paid. However, neither of the authorities below have arrived at any finding regarding the factual aspect of the said allegation against the appellants. Materials on record do not appear to have been analysed to ascertain the veracity of the said allegation. Being so and in the absence of any adverse finding to the appellants, certainly lower

appellate authority was not justified in imposing the penalty. Viewed from this angle the appellants are justified in making grievance against the impugned order in this regard. Hence, the appeal is allowed, the impugned order imposing penalty is hereby set aside.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/