TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Date 15/12/2010

Appeal No. E/645 /2005 - EX[DB]

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE — Appellant

Vs

M/S KAMDEEP MARKETING PVAT.LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No. 822/ 2010 EX[DB]** dated 01-12-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   M/S KAMDEEP MARKETING PVAT.LTD.
   114-116 TRADE HOUSE SOUTH HOUSE INDORE M.P.
2. Adv. / Consult
   MR.RAMESH NAIR
   LAKSHMI VIHAR, AG- 192, SCHEME NO. 54, VIJAYNAGAR, INDORE(MP)

3 C.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 01.12.2010

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?	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

Excise Appeal No. 645 of 2005

[Arising out of Order-in-Appeal No. IND-I/420/04 dated 22.11.2004 passed by the Commissioner (Appeals-I) Customs & Central Excise, Indore].

CCE, Indore — Appellants

Vs.

M/s Kamdeep Marketing Pvt. Ltd. — Respondent

Appearance:

Rep. by Sh. I. Baig, DR for the appellants.

Rep. by Sh. Ramesh Nair, Advocate for the respondent.

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

FINAL Oral Order No. 822/10 – EX

Per: Hon'ble Sh. Justice R.M.S. Khandeparkar:

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

2. The only dispute which is sought to be agitated in the matter relates to the date from which the interest liability would start in case of refund of the amount which was deposited by the assessee pursuant to the order passed under Section 35FF of the Central Excise Act, 1944.

3. Undisputedly, the respondents had deposited the amount in terms of the order passed by the Tribunal on 21.11.2002. The appeal was finally disposed of in favour of the respondents on 31.12.2003. The respondents approached the appellant for refund of the amount deposited initially at Indore jurisdiction on 03.03.2004 and at Pithampur on 04.06.2004. The original TRC was produced on 01.09.2004 and refund order was passed on 14.09.2004. However, no interest was granted. The respondents therefore, filed appeal before the Commissioner (Appeals) which came to be allowed and the Commissioner directed payment of interest from the date of the order of the Tribunal.

4. While challenging the impugned order, the DR submitted that there is no provision of law which could entitle the assessee to claim interest from the date of the order of the Tribunal. Even applying the provision of Section 11BB, the interest could be from the day on expiry of three months from the date of application for refund. Attention was also drawn to the decision of the Supreme Court in the matter of **Commissioner of Central Excise, Hyderabad** vs. **ITC Ltd.** reported in 2005 (179) ELT 5 (SC) and of the Tribunal in the matter of **Samarth Engineering Co. Pvt. Ltd.** vs.

Commissioner of C. Ex. Jamshedpur reported in 2008 (226) ELT 122 (Tri. Kolkata).

5. Learned Advocate for the respondents on the other hand drawing attention to the amended provision in Section 35FF of the Act submitted that though the amendment was inserted w.e.f. 10.05.2008, it clearly specifies that the assessee are entitled for interest unless the amount is refunded within three months.

6. It cannot be disputed that once it is held by the final authority that the amount was not payable to the Revenue, it cannot be said that the revenue can still withhold the money belonging to the assessee. In fact, that is the mandate of amended provision under Section 35FF of the Act. It provides that where an amount deposited by the respondent in pursuant of an order passed by the Commissioner (Appeals) or Appellate Tribunal under the first proviso to Section 35F, is required to be refunded consequent upon the final order of the Appellate Authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, the interest at the rate specified in Section 11BB after the expiry of three months from the date of communication of the order till the date of the refund should be paid alongwith the refund of the deposit. Undoubtedly, the said provision has come into force with effect from 10.05.2008. Neverthless, the principle which is sought to be communicated under the said provision of law would also otherwise apply to every case where the amount is illegally withheld. Once the Appellate Authority declares that the amount deposited does not belong to the revenue and is required to be refunded to the assessee, the question of causing any delay in refund of such amount by the department does not arise. If any such delay

is caused, certainly the Government will have to pay interest on such amount to be refunded. Undoubtedly, Government would be entitled to recover such expenditure incurred from the officer or officers, as the case may be, responsible to cause delay in refunding the amount. But that itself will be no justification to delay the payment of the amount, including interest thereon to the assessee to whom it is due.

7. Considering the above provision of law read with decisions of the Apex Court as well as of the Tribunal relied upon by the department, certainly the amount was required to be refunded within three months from the date of declaration of the order. Since the order was pronounced in the open Court, and absence of knowledge of the said order can not be pleaded and the interest liability obviously would commence w.e.f. 01.04.2004. Obviously, to that extent, the Commissioner (Appeals) erred in directing payment of interest from 31.12.2003.

8. For the reasons stated above, therefore, the appeal partly succeed, the impugned order is modified to the extent that the interest liability would commence from 01.04.2004, with the modification in the impugned order, the appeal is disposed of.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

/Pant/