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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/3092/2010 - EX[DB] WITH E/S/2870/10 & E/M/844/10-EX

Date 20/12/2010

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

To :
M/S GODREJ HERSHEY LTD
PLOT NO 5,NEW INDUSTRIAL AREA
NO1,MANDIDEEP, DISTT- RAISEN(MP)-462046

M/S GODREJ HERSHEY LTD — Appellant

Vs

C.C.E BHOPAL — Respondent

STAY ORDER NO.1014/2010-EX
MISC ORDER NO.696/2010-EX

I am directed to transmit herewith a certified copy of **Final order No. 859/ 2010 EX[DB]** dated 03-11-10 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 BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult SH. G. NATARAJAN, ADV.,
   MR.SWAMY ASSOCIATES
   # 18, RAMS FLATS,ASHOKA AVENUE,DIRECTOR'S COLONY, KODAMBAKKAM, CHENNAI 600024
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 (Harvana)
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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

COURT NO. I

DATE OF HEARING : 03/11/2010.
DATE OF DECISION : 03/11/2010.

Excise Misc. Application No. 844 of 2010 and Stay Application No. 2870 of 2010 in Appeal No. 3092 of 2010

M/s Godrej Hershey Limited — Appellants

Versus

CCE, Bhopal — Respondent

Appearance

Shri G. Natrajan, Advocate – for the Appellants.

Shri Sunil Kumar, Authorized Representative (DR) – for the Respondent.

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

STAY Order No. 1014/10-EX Dated : ____________
Misc Order No. 656/10-EX

Per. Shri Justice R.M.S. Khandeparkar :-

Heard. As we are proposed to dispose of the appeal itself, having heard at length the advocate for the appellants and the DR for the respondent, the application is disposed of without insisting for any pre-deposit and give direction to the Registry to place the appeal for disposal forthwith.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 03/11/2010.
DATE OF DECISION : 03/11/2010.

Excise Appeal No. 3092 of 2010

[Arising out of the Order-in-Original No. 11/COMMR/CEX/ADJ/BPL-II/2010 dated 16/07/2010 passed by The Commissioner of Customs, Central Excise & Service tax, Bhopal.]

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 would 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 Department Authorities?	: Yes

M/s Godrej Hershey Limited — Appellants

Versus

CCE, Bhopal — Respondent

Appearance

Shri G. Natrajan, Advocate – for the Appellants.

Shri Sunil Kumar, Authorized Representative (DR) – for the Respondent.

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

FINAL Order No. 859/10-EX Dated : ____________

Per. Shri Justice R.M.S. Khandeparkar :-

Heard at length the learned advocate for the appellants and the DR for the respondent. This appeal has been heard pursuant to the order passed today in Stay Application No. 2870 of 2010.

2. This appeal arises from order dated 16th of July 2010 passed by the Commissioner, Bhopal. By the impugned order, demand for the duty amount of Rs. 6,40,802/- has been confirmed alongwith interest and equal amount of penalty, besides amount of Rs. 1,52,17,438/- has been ordered to be recovered on account of wrongful availment of Cenvat credit. Penalty of Rs. 10,00,000/- and also of Rs. 50,000/- has been imposed for other contraventions.

3. The appellants are engaged in manufacture of miscellaneous edible preparations. During the scrutiny of ER-1 for the month of July 2007 it was noticed by the department that the appellants had cleared dutiable excisable goods valued at Rs. 1,71,55,430/- on which the duty to the tune of Rs. 27,44,869/- besides education cess of Rs. 54,897/- and higher education cess of Rs. 27,449/- was payable by 5th of August 2007 but the appellants paid an amount of Rs. 25,40,000/- and Rs. 22,000/- from PLA and sum of Rs. 1,77,543/-, Rs. 3,551/- and Rs. 1,775/- from the Cenvat account towards the basic duty, education cess and higher education cess respectively. Consequently, there was short payment of Rs. 67,326/-, Rs. 11,346/- and Rs. 3,674/-

towards basic duty, education cess and higher education cess respectively. On being pointed out the same to the appellants, they later submitted revised ER-1 return for the month of July 2007 alongwith their letter dated 28th November 2007 disclosing corrected quantity of clearance in respect of Tea/Coffee Premix/and Enerzal Drinks and thereby total value of clearances for the month of July 2007 was sought to be reduced to Rs. 1,66,55,756/- instead of original amount disclosed to the tune of Rs. 1,71,55,430/- and thereby the appellants sought to justify the figures of duty shown as payable in the original ER-1 return for the month of July, 2007. Perusal of revised return disclosed discrepancy in relation to the invoice numbers while the same followed by further investigation. Consequently it was revealed that during the period from July 2006 to October 2007, the value of the goods cleared by the appellants was Rs. 7,60,59,574/- whereas the value shown in the ER-1 return was Rs. 7,26,69,219/- and thus they disclosed less value to the tune of Rs. 33,90,355/- involving duty element of Rs. 5,42,446/-, besides education cess of Rs. 16,010/-. It was also noticed that in the month of July 2007, they had paid less duty to the tune of Rs. 67,326/- and the education cess of Rs. 15,020/-. Having pointed out the same to the appellants, the appellants started clearing the excisable goods on payment of duty consignment-wise through PLA from 9th of January 2008 and also paid the amount of short payment of duty to the tune of Rs. 6,09,773/-, education cess of Rs. 20,862/-, higher education cess of Rs. 10,170/- alongwith the interest amount of Rs. 41,093/-.

Consequently, the show cause notice came to be issued on 13th May 2008 for necessary proceedings. The said proceedings were contested by the appellants and after hearing the parties, the impugned order came to be passed.

4. The learned advocate for the appellants draws our attention to Rule 8 of the Central Excise Rules, 2002 as well as Rule 173G of Central Excise Rules, 1944 and placing reliance in the decision of the Tribunal in the matter of **Commissioner of Customs and Central Excise, Indore vs. Deepak Silicate (P) Ltd.** reported in **2010 (258) E.L.T. 127 (Tri. – Del.)** submitted that merely because there is short payment of duty, the penal provisions provided under sub-Rule (3A) of Rule 8 of the said Rules are not attracted. It is only in the case of total failure to pay the duty for the entire month by the specified due date of the subsequent or the following month that the provisions of sub-Rule (3A) are attracted. He further submitted that there is a basic difference between short payment and default. In the case of short payment of duty, other statutory provisions dealing with such lapses may perhaps be attracted, but in order to attract the provisions of Rule 3A, there has to be total default in payment of duty for the entire month. Undisputedly in the case of appellants there was no such default. Default merely related to two or three days for each of the months and that too it had inadvertently remained to be cleared on account of the procedure which the appellants was following pursuant to the contractual arrangements between the appellants and principal. According to

the appellants, the agreement between the appellants and their principals required to submit the detail account to the principals by the last Friday of every month. Occasionally the appellants failed to take into consideration two or three days of every month which fell beyond the last Friday of every month. However, there was no intentional avoidance by payment of duty. In such circumstances, the drastic consequences contemplated under sub-Rule (3A) of Rule 8 could not have been invoked as the same could have drastic effects on the industries. Besides, there are other provisions like 11AC to take care of such situations. According to the learned advocate therefore the authority below erred in imposing penalty under sub-Rule (3A) of Rule 8 of the said Rules.

5. He further submitted that in the case in hand, the respondents have shown undue haste in taking action against the appellants for recovery of the dues in terms of the impugned order inspite of the fact that the department was fully aware of the pendency of the present appeal and the stay application therein. They have even proceeded to detain the entire products of the appellants which are causing undue hardship to the appellants.

6. The departmental representative on the other hand placing reliance in the decision of the Bombay High Court in the matter of **Vidushi Wires Pvt. Ltd. vs. Union of India** reported in **2003 (156) E.L.T. 168 (Bom.)** and the Gujarat High Court in the matter of **Elson Packaging Industries Pvt. Ltd. vs. CCE &**

Customs reported in **2010 (257) E.L.T. 509 (Guj.)** and of the Tribunal in the matter of **CCE, Chandigarh vs. Ralson Carbon Black Ltd.** reported in **2008 (229) E.L.T. 113 (Tri. - Del.)** as also of the Apex Court in the matter of **Vijay Prakash D. Mehta vs. Collector of Customs** reported in **1989 (39) E.L.T. 178 (S.C.)** and drawing our attention to the CBEC's Excise Manual of Supplementary Instructions Part III, submitted that the appellants not only failed in complying with their obligation under Rule 8 of the said Rules but were also indulging in clearing the goods without proper accounting in their daily production record and also without issuing the invoices which apparently disclosed intentional evasion of the duty. He further submitted that Rule 8 clearly provides for the manner and the procedure for payment of duty as also for the consequences in the case of failure to comply the same and it cannot be said that inspite of failure to comply with the obligation under Rule 8 (1), the sub-Rule (3A) would not be attracted. He further submitted that the guidelines issued under Excise Manual clearly provides that after allowing specified time, it is obligatory to the department to initiate the proceedings for the recovery of the amount due. Being so, according to the departmental representative, the departmental authorities cannot be accused of any undue haste in seeking to enforce the order relating to the amount due to the revenue. Referring to the decision of the Bombay High Court, it was sought to be contended that the same clearly held that the provisions of Rule 8 are mandatory and referring to the Gujarat High Court judgment it was contended that the availment and utilisation of

Cenvat credit has to be strictly in accordance with provisions of law and not otherwise.

7. The learned advocate for the appellants in rejoinder submitted that the decision of the Bombay High Court was in relation to the provisions of the law comprised under Rule 8 as it existed prior to 2006 wherein there was specific provision that in the case of three successive defaults irrespective of number of days for default the penal provisions was to be attracted. It was also sought to be contended that the judgment of the Gujarat High Court was on the vires of the provisions relating to the Cenvat credit. He also reiterated the submission that the default cannot be equated with the short payment.

8. The Commissioner after taking into consideration the entire materials on record and the rival contentions has held that for default in duty, the consequences and penalties specified in the Rules alone shall be invoked and considering the system which was adopted by the appellants for calculating the duty liability up to the last working Friday of every month during the relevant period was admittedly incorrect as there was short payment of duty. In other words and as was fairly submitted by the learned advocate for the appellants, the fact that for the relevant period the duty liability in relation to the clearances made subsequent to the last working Friday of every month was not discharged, has not been disputed and only reason which is sought to be disclosed for the same was the mistake allegedly happened due to the negligence on the part of the employees of the appellants,

and that there was no wilful intention to evade the payment of duty. However, as rightly pointed out by the Commissioner apart from merely contending that it was a mistake which occurred due to the negligence on the part of the employees of the appellants, no further justification for such alleged mistake was placed on record. It could be argued that once it is a mistake, question of producing any justification cannot arise, however, contention regarding mistake will have to be considered taking into consideration the circumstances which prevailed at the relevant time and as revealed from the records.

9. Undoubtedly short payment occurred for a period from July 2006 to October 2007 and the same was cleared alongwith the payment of interest on 20th January 2008 after being pointed out by the department. It is also pertinent to note that for the relevant period the ER-1 returns which were filed did not disclose total clearances of the product manufactured by the appellants for the relevant period. There was also an attempt on the part of the appellants to submit revised returns so as to justify the figures disclosed in the original return filed. However, the same revealed discrepancy in the invoice numbers of the records and nowhere disclosed any cogent explanation having been furnished by the appellants for such discrepancies.

10. The Commissioner in the impugned order has also held that the appellants sought to clear the product without disclosing the same and without proper accounting the same in the daily

production record and also cleared the goods without issuing the invoices.

11. The above findings regarding the violations of the provisions of law which have been arrived at on the materials on record are not shown to be either perverse or not borne out from the records. In fact, the challenge to the impugned order is essentially on points of law and relating to the obligatory of Rule 8 (1) and (3A) of the Central Excise Rules 2002.

12. Rule 8 (1) of the said rules provided that the duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6^{th} day of the following month, if the duty is paid electronically through internet banking and by the 5^{th} day of the following month, in any other case, provided that in case of goods removed during the month of March, the duty shall be paid by the 31^{st} day of March. The second proviso relates to the situation where there is exemption available to a person under a notification. The explanation to the said rule provides that the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date and if the assessee deposits the duty by cheque, the date of presentation of the cheque in the bank designated by the Central Board of Excise and Customs for that purpose shall be deemed to be the date on which the duty has been paid subject to realization of that cheque.

13. Sub-Rule (3A) of Rule 8 of the said rules provides that if the assessee defaults in payment of duty beyond thirty days from the due date, as prescribed in sub-rule (1), then notwithstanding anything contained in said sub-rule (1) and sub-rule (4) of rule 3 of Cenvat Credit Rules, 2004, the assessee shall, pay excise duty for each consignment at the time of removal, without utilizing the Cenvat Credit till the date the assessee pays the outstanding amount including interest thereon; and in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow.

14. Sub-Rule (4) of Rule 8 provides that the provisions of section 11 of the Central Excise Act, 1944 shall be applicable for recovery of the duty as assessed under rule 6 and the interest under sub-rule (3) in the same manner as they are applicable for recovery of any duty or other sums payable to the Central Government.

15. Plain reading of Rule 8 (1) of the said rules would disclose that it clearly specifies the manner of payment of duty. It clarifies that the manufacturer has to pay the duty in relation to every month pertaining to the goods removed from his factory or warehouse during such month by 5^{th} of the following month except in the case of payment made electronically in which case the payment would be cleared by 6^{th} of such following month. It further clarifies that in the case of the month of March, the duty has to be paid by 31^{st} day of the month of March itself.

16. The rule not only prescribes the manner for payment of duty and the outer limit by which the obligation in relation to the payment of duty is to be cleared, it also clarifies that it is only upon crediting of the duty to the account of the Central Government by the specified date that the duty liability would stand discharged and not otherwise.

17. Sub-Rule (3A) further clarifies the consequences of failure to comply with the obligation under Rule 8 (1) of the said Rules. It specifically states that for the default in payment of duty beyond 30 days from the due date as prescribed under sub-Rule (1) of Rule 8, the penal provisions would be attracted.

18. It is settled law that whenever any primary or subsidiary statutory provision prescribes a particular mode for performing certain obligation and simultaneously it also prescribes the consequences for non-compliance of such obligation in the prescribed manner and within the prescribed period of limitation, such provisions are always to be considered as mandatory. Bearing in mind this basic principal of law and applying the same to the provision of law in hand which apparently disclose not only the manner of payment of duty but also prescribes the period by which the same has to be paid, prescribes the circumstances in which the obligation thereunder would stand discharged and also prescribes the consequences which would follow in case of non-compliance of such obligation in the manner prescribed, in our opinion, by no stretch of imagination it can be held to be either

optional or could be interpreted in such a manner that would result in altering the consequences contemplated under those provisions.

19. It was strenuously argued on behalf of the appellants that the expression "defaults" used in sub-Rule 3A would disclose that the said Rule would not be attracted in the case of mere short payment. It is only when there is a total default in payment of duty in the manner stated under sub-Rule (1) then only the provisions of sub-Rule (3A) would be attracted. Heavy reliance is sought to be placed in the decision of the Tribunal in the matter of Deepak Silicate (P) Ltd. (supra) in that regard while drawing our attention to para '5' of the said order.

20. Apart from observing that the said order is of the Hon'ble Single Member and therefore not binding, even otherwise, the decision cannot be said to be of any help to the appellants in support of their arguments. In para 5 of the decision it has been observed that "on careful perusal of the show cause notice, it is noticed that there was only short payment of duty of Rs. 72,218/- during those five months which stood paid by assessee in October, 2006 alongwith interest. In other words, the show cause notice only alleged short-levy during those five months. Every case of short-levy cannot be treated as a case of default. The show cause notice does not reveal the circumstances under which short payment has occurred. The deemed non-duty paid clearance will arise only in cases of default of assessed duties and consequences of treating such clearances as non-duty paid

clearances such as seizure and confiscation, prohibition regarding utilisation of Cenvat credit, and the requirement of paying consignment wise will follow. In the present case, it is apparent that there was no allegation of default in payment but only short payment of duty in respect of five months. The reasons for short-payment that occurred have not been dealt with in the show cause notice, order-in-original and the order-in-appeal. Under these circumstances, the finding of default in payment and consequent liabilities are difficult to sustain. In other words, in the given facts and circumstances of the case, Rule 8 (3A) cannot be invoked". Plain reading of this para would disclose that the Hon'ble Member of the Tribunal refrained from agreeing with the lower authority in the facts and circumstances of the case which clearly disclosed absence of allegation of the default and mere allegation of short payment without disclosing the circumstances which led to the short payment. In other words, the decision was not on any point of law as such but was in the given set of facts and circumstances of the case. Indeed the order nowhere discloses any discussion regarding the scope of Rule 8 of the said Rules. Mere observation that "every case of short levy cannot be treated as a case of default" cannot be of any help to the appellants to contend that the Tribunal has held that the provisions of sub-Rule (3A) would not be attracted unless there is total default for the month in payment of duty. No such law has been laid down under the said decision nor it can be even inferred besides that every sentence in an order cannot be read as a statute and the law in that regard is well settled.

21. It is true that word "default" is not found in sub-Rule (1). However, merely because the said word is not found in sub-Rule (1) that cannot be a justification to arrive at a conclusion that the provisions of sub-Rule (3A) would not be attracted inspite of non-compliance of sub-Rule (1). There could be no occasion to use the word "default" in sub-Rule (1) as sub-Rule (1) essentially deals with the subject of the manner of payment and the period within which it is required to be paid. The provision for the consequences of default can be found only when the rule making authority deals with the consequences of failure to comply with the obligation regarding the payment of duty. Obviously, therefore, there could be no occasion to use the word "default" in sub-Rule (1).

22. It is also pertinent to note that there is no expression "short payment" or "less payment" used in sub-Rule (1) and rightly so because question of considering whether there is short payment or less payment can arise only after there is default in complying with the obligation prescribed under sub-Rule (1).

23. Besides, the contention that it is only in case of total default in relation to the entire month that would amount to non-compliance of sub-Rule (1) of Rule (8) if accepted, it would result in rendering the explanation to be nugatory. The Explanation (a) to the said Rule specifically provides that the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the

specified date. That apart sub-Rule (1) nowhere makes any differentiation between payment of duty for the entire month or part thereof. It merely prescribes that the clearance during a particular month, the obligation of payment of duty in respect thereof should be cleared by the specific date of the subsequent month. To accept the contention sought to be canvassed on behalf of the appellants would virtually amount to read down the Rule 8 (1) and to provide something more than what is stated and what is revealed from the actual words used in the said Rule by the rule making authority. It is not the function of the Tribunal to, under the guise of interpretation, to distort the meaning of the statutory provision.

24. As far as term "default" is concerned, the same has not been defined either in the said Rules or in the Central Excise Act, 1944. The term "default" has been defined in the Black's Law Dictionary 6^{th} Edition to mean "by its derivation, a failure. An omission of that which ought to be done. Specifically, the omission or failure to perform a legal or contractual duty". Apparently, therefore, any omission or failure to comply with the obligation relating to payment of duty in the manner prescribed and within the period specified under Rule 8 (1) of the said Rules would amount to default in payment of duty. It may be a short payment of duty or it may be total failure to pay the duty.

25. It was sought to be argued that unless the contention which is sought to be canvassed on behalf of the appellants is accepted it would have drastic effect on the industry. At the

outset, it is to be noted that it is not a job of judicial or quasi-judicial authority on the ground of hardship to the parties that is to be considered while interpreting any provision of law. Hardship can never be a justification for interpretation of a statutory provision. Besides, the contention regarding hardship is also without any substance. Undisputedly while imposing the penalty, the provisions of Section 11AC would be attracted. The said provision of law takes abundant care to ensure that the imposition of penalty would not be without consideration of the circumstances under which the default is committed. The provision regarding 100% duty liability can arise only when there is intentional evasion of duty. Being so, in case the assessee is able to establish its bonafide, certainly the assessee would get necessary relief in that regard.

26. The Bombay High Court in Vidushi Wires Pvt. Ltd. case while dealing with Rule 8 of the Central Excise Rules, 2001 had held that "it would be clear that non-compliance of rule in question is made penal. It, therefore, has to be treated as mandatory". The observation of the Bombay High Court that the rule is mandatory is not based on the provisions regarding the manner in which the duty liability was required to be discharged but on the basis that the failure to comply with the obligation would result in imposition of penalty. In other words, there having been penalty prescribed for failure to comply with the obligation to discharge the duty liability that the Bombay High Court has held that the provision is mandatory.

27. The decision of the Gujarat High Court in Elson Packaging Industries Pvt. Ltd. case was not on the vires of the provision. Firstly, it was a decision in a tax appeal and not in writ-jurisdiction. It was held therein that the provisions of Rule 173 G (1) (e) of the Central Excise Rules, 1944 were correctly applied by the Tribunal to the facts of the case and the prohibition prescribed under relevant provisions of the Rules did not take away or affect the right of the assessee to avail the Cenvat credit in accordance with the Cenvat credit scheme and there was no conflict between the Rules commencing from Rule 57A to 57V of the Cenvat Credit Scheme and the Rule 173G of the said Rules.

28. In Ralson Carbon Black Ltd. case, the Hon'ble Bench of the Tribunal had held that the assessee had utilised the Cenvat credit during the subsequent period for discharge of outstanding amounts for the earlier period and thus there was gross violation of the provisions of law rendering the assessee to be liable for penal action.

29. It was also sought to be contended that considering the provisions of Central Excise Rules, 2001 as well as the provisions of Central Excise Rules, 2002 prior to 2006 that is prior to the amendment to the provisions, if those provisions have considered the intention of the law makers in relation to the scope of sub-Rule (1) of Rule 8 as sought to be contended on behalf of the appellants and non-applicability of sub-Rule (3A) to the situation like the one in the case in hand would at once be clear. Attention

was drawn to clause (e) of sub-Rule (1) of Rule 173G which was enforced earlier. Said clause (e) read thus "if the manufacturer defaults on account of any of the following reasons, namely :

(i) Full payment of any one instalment is discharged beyond a period of thirty days from the date on which the instalment was due in a financial year, or

(ii) The due date on which full payment of instalments are to be made is violated for the third time in a financial year, whether in succession or otherwise,

then the manufacturer shall forfeit the facility to pay the dues in instalments under this sub-rule for a period of two months, starting from the date of communication of an order passed by the proper officer in this regard and during this period the manufacturer shall be required to pay excise duty for each consignment by debit to the account current referred to in Clause (b) and in the event of any such failure it will be deemed as if such goods have been cleared without payment of duty and the consequences and penalties as provided in the Central Excise Rules shall follow."

30. As already stated above, a provision of law has to be understood primarily by the grammatical meaning of the word used in the provision. The occasion to consider the intention of the law makers can arise only in case where the interpretation of any ambiguous statutory provision is called for. Even otherwise to accept the argument sought to be canvassed on behalf of the appellants and if we read the provisions of law as it stands and compare the same with the erstwhile provision of law pointed out

by the learned advocate for the appellants, it would clearly disclose the intention of law makers to make the provisions more stringent. Very fact that the facility of payment in instalments is done away with and apart from providing that the duty liability has to be discharged by the specified date the provisions of law clearly explain that it is only upon the discharge of duty liability, as specified in the provision of law, and the amount is credited to the account of the Central Government by the specified date, that the assessee can avoid imposition of penalty. Therefore, the arguments which are sought to be advanced with reference to the erstwhile provision of law rather than rendering any help to the appellants justifies the view that we are taking in the matter. For the reasons stated above, therefore, we do not find any infirmity as such in the impugned order by the Commissioner.

31. As regards the detention of the goods, undoubtedly, the department is armed with the guidelines laid down by the Board, but at the same time it is not the case of the Department that the assessee had been consistently in default in the past or that in the past, the appellants have avoided to comply with the order passed by the Competent Authority. In such circumstances, if the appellants want some breathing time to clear the goods, certainly the request in that regard has to be considered.

32. For the reasons stated above, therefore, as far as order of detention is concerned, the same cannot be sustained and stands vacated. This, however, will not prevent the department from taking appropriate steps after the expiry of the appealed period

against the order passed today. No other ruling is warranted. The appeal on other counts fail. The appeal is accordingly disposed of in above terms.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK