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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/1669/2008 – SM[BR] Date 15/11/2010

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

To :
M/S ABHINAV INDUSTRIES
H-1011, ROAD NO. 14,V.K.I.AREA,JAIPUR.

M/S ABHINAV INDUSTRIES Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1227 / 2010-SM[BR] dated 27.10.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI

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

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal No.1669/08-sm

(Arising out of order in appeal No.39/RKS/CE/JPR.I/08 dated 7.3.2008 passed by the Commissioner of Central Excise (Appeals),

Date of Hearing: 27.10.2010

For approval and signature:

Hon'ble Mrs Archana Wadhwa, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982? No
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? No
4. Whether Order is to be circulated to the Departmental Authorities? Yes

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M/s Abhinav Industries — Appellants

Vs

CCE, Jaipur-I — Respondent

Appeared for the Appellant: Ms. Sukriti Das, Advocate
Appeared for the Respondent: Shri K.P. Singh, SDR

Coram: **Hon'ble Mrs. Archana Wadhwa ,Member (Judicial)**

Final ORDER - 1227/2010 SM(BR)

Per Archana Wadhwa:

After hearing both the sides, I find that the issue in the present appeal relates to the demand of interest of Rs. 37,333/- in terms of Section 11AB of Central Excise Act, 1944 on the differential duty which stands paid by the appellants, being in the differenceassessable value of goods cleared by them under Central Excise invoices and the subsequently raised supplementary invoices. It stands admitted by both sides that the issue on merits is no longer res-integra and stands settled by the Hon'ble Supreme Court in the case of CCE Pune Vs. SKF India Ltd reported in 2009 (239) ELT 385 (SC) and the subsequent decision of the Hon'ble Apex Court in the case of CCE Vs International Auto Ltd reported in 2010 (250) ELT 3 (SC). It stands held in the said judgment that the price difference between the date of removal and the enhancement price at which the goods are ultimately sold, is liable to be charged to interest in terms of proviso to Section 11AB. As such, in view of the above declaration of law by the Apex Court, I hold that the appellant is liable to pay the interest on the value between the original price and the value at which the goods were ultimately sold by way of raising supplementary invoices.

2. The learned Advocate at this stage submits that the supplementary invoices were raised during March, 2006 to June 2006 whereas the show cause notice was issued on 2.8.2007 and as such, the same is barred by limitation.

3. For the above proposition, reliance is placed on the Tribunal's decision in the case of Rajasthan Transformer & Switchgears Vs CCE Jaipur reported in 2010 (253) ELT 319 (Tri. Del) as also in the case of KEC International Ltd Vs CCE Jaipur reported in 2010 (96) RLT Online 48 (Cestat-Del).

4. After hearing the learned DR and after going through the judgments of the Tribunal, I find that in both the cases, the matter

was remanded to the lower authorities for reconsideration of the appellants pleas as to whether the interest demand would be barred by limitation or not, on the ground that such pleas was not raised before the lower authorities and as such, was not considered by them. As such, it can be safely concluded that the said decisions of the Tribunal have not declared any law point on the issue of demand of interest being barred by limitation.

5. Examining the above plea independently, I find that the limitation provisions are contained in Section 11A of the Central Excise Act, 1944. On going through the same, I find that they are related to recovery of duty not levied or not paid or short levied or short paid or erroneously refunded. There is not even a whisper of the word 'interest' in the said section so as to indicate that the limitation, as contained in the said section, applies to interest.

6. On the other hand, I find that the interest liability arises in terms of provisions of Section 11AB. The said section is to the effect that where any duty of excise has not been levied or paid, or has been short levied or short paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2) of Section 11A, **shall** in addition to the duty, being liable to pay interest at such rate…………………. till the date of payment of such duty. A reading of the above provision makes it clear that there is no time limit fixed by the legislation for payment of interest in respect of the duty confirmed against the assessee. In fact, the Hon'ble Bombay High Court in the case of CCE, Aurangabad Vs Padmashri V.V. Patil S.S.K. Ltd reported in 2007 (215) ELT 23 (Bom.) has held that even if no notice is issued,

interest is liable to be paid for the delayed payment of duty. Use of words 'shall' and 'be liable' appearing in the relevant section indicate absence of option and chargeable of interest in all cases of non-payment or short payment.

7. It is well settled that interest being appending to the principal amount and when the principal amount is to be paid by the assessee to the exchequer, as confirmed in terms of Section 11-A, interest liability would arise automatically. In the absence of any provision, laying down any time limit for raising of interest demand and in the light of the Bombay High Court judgment liability of interest is to be paid automatically without any notice and as such, the question of limitation does not arise.

8. In view of the above, the appeal filed by the Appellants is rejected.

(ARCHANA WADHWA)
Judicial Member

MPS*