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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/205 /2010 – SM[BR] E/ STAY / 208 / 2010-SM[BR] Date 07/12/2010

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

To :
M/S. ELECTROLITES (POWER) PVT. LTD.
S-758(A), ROAD NO.9-F, V.K.I. AREA, JAIPUR

M/S. ELECTROLITES (POWER) PVT. LTD. Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No**.1354/2010-SM[BR]&S/632/2010 dated 22.11.2010 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,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Single Member Bench

E/Stay/208/10-SM in Appeal No.E/205/10-SM

Date of Hearing/Decision: 22.11.2010

For approval and signature:
Hon'ble Mr.M.Veeraiyan 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?	No
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?	No

M/s. Electrolites (Power) Pvt.Ltd — Appellant

Vs.

CCE, Jaipur — Respondent

Present for the Appellant : Ms.Sukriti Das, Advocate
Present for the Respondent: Shri Anil Khanna, SDR

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

Final **ORDER No.** 1354/2010 SM(BR) &
S-632/2010 SM(BR)

PER: M.VEERAIYAN

After hearing both sides, the stay petition is disposed of waiving pre-deposit of interest and with the consent of both sides, the appeal is taken itself for final hearing.

2. The dispute relates to the interest on differential duty paid consequent to enhancement of price based on the price escalation clause in the contract for supply of the goods. Both sides agree that in view of the decision of Hon'ble Supreme Court in the case of CCE vs.SKF India Ltd. reported in 2009 (239) ELT 385, the interest is liable to be paid.

3. Learned Advocate for the appellants submits that the issue of limitation was not raised before the original authority but the same was raised before the Commissioner (Appeals) as recorded by him in the impugned order. No finding was given by him. She also relies on the decision of the Tribunal in the case of Rajasthan Transformer & Switchgears vs. CCE, Jaipur reported in 2010 (2530 ELT 319 (SC) and seeks remand before the original authority for considering the aspect of limitation. She also draws my attention to the decision of the Tribunal in the case of TVS Whirpool Ltd. reported in 1996 (86) ELT 144 against which the department filed the appeal which was dismissed with the observation "It is reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the claim for interest thereon."

4. In view of above, the appeal is rejected holding that the interest is leviable. However, the mater is remanded to the original authority to consider the plea of limitation.

5. The appeal is disposed of as above. The stay petition is also disposed of.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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