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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

Date 07/12/2010

Appeal No. E/160 /2009 – SM[BR]

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

To :
MS/ S.KUMARS LTD.
3-A, INDUSTRIAL AREA, A.B.ROAD, DEWAS (M.P.) Appellant

MS/ S.KUMARS LTD. Vs
Respondent

C.C.E. INDORE

I am directed to transmit herewith a certified copy of **Final order No.** 1360 / 2010-SM[BR] dated 11.11.2010 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. INDORE
   MANIK BAGH PALACE, POST BOX NO. 10, INDORE 452001 (M.P.)
2. Adv. / Consult SHRI V.LAKSMIKUMARAN ADV.
   B-6/10, SAFDAR JUNG ENCLAVE 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
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI, PRINCIPAL BENCH, NEW DELHI

Appeal No.E/160/2009-SM

Arising out of: OIA No.IND-I/168/2008, dt.24.9.2008

Passed by: Commissioner of Central Excise & Customs (Appeals), Indore

For approval and signature:
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

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?	Yes

Appellant:
M/s S. Kumar Ltd.

Respondent:
CCE Indore

Represented by:
Shri Ravi Raghvan, Shri Hemant Bajaj, Advocates for the Assessee;
Shri Anil Khanna, SDR for the Revenue.

CORAM:
MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)

Date of Hearing/Decision:11.11.10

Final ORDER No. 1360/2010 SM(BR)

Per: Mrs. Archana Wadhwa:

After hearing both sides, I find that the appellants are independent processors of fabrics and registered with Central Excise. A show cause notice, dt.23.01.07 was issued by the Assistant Commissioner having jurisdiction over the appellant's factory, directing them to explain as to why the duty amounting to Rs.2,91,129/- short paid by them from January 2006 to February 2006, should not be recovered under Section 11(A)(1) of Central Excise Act along with interest and why the penalty should not be imposed under Rule 25 of Central Excise Rules, 2002 and as to why the facility to pay duty in monthly instalments should not be forfeited.

2. While adjudicating the said show cause notice, the Assistant Commissioner observed that inasmuch as the duty stand paid through CENVAT Credit subsequently along with interest, the proposal to pay the same from PLA was dropped by adjudicating authority. However, penalty of Rs.5,000/- was imposed upon them under Rule 25 of Central Excise Rules, 2002.

3. Being aggrieved with the said order, Revenue filed an appeal against the same before Commissioner (Appeals). The said appellate authority vide his impugned order, directed the appellant to pay the differential duty from their PLA along with interest and to take re-credit of amount from their CENVAT account. Hence, the present appeal.

4. I find that the issue stands no more res-integrqa. Larger Bench of the Tribunal in the case of M/s Noble Drugs Ltd. Vs. CCE Nasik as reported in 2007 (215) ELT 500 (Tri-LB), has held that an assessee

during the period of forfeiture of facility of payment of duty on fortnightly basis, can discharge duty liability by utilizing the CENVAT Credit and failure to do so, would not attract interest and penalty. To the similar effect is the decision of Hon'ble Mumbai High Court in the case of M/s Lloyds Steel Industries Ltd. Vs UoI 2005 (183) ELT 351 (Bom.) In a subsequent decision in the case of M/s Lloyds Steel Industries Ltd. Vs UoI 2009 (246) ELT 114 (Bom.), Hon'ble High Court agreed with the Larger Bench decision of the Tribunal in case of M/s Noble Drugs.

5. Inasmuch as the disputed issue is settled in favour of the appellant, I set aside the impugned order and allow the appeal with consequential relief.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

cbb