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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/2679/2009 – SM[BR]** Date **22/06/2011**

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

To :
C.C.E. LUDHIANA
CENTRAL EXCISE HOUSE, 'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

C.C.E. LUDHIANA Appellant

Vs

M/S HERO CYCLES LTD. (CRD), Respondent

I am directed to transmit herewith a certified copy of **Final order No. 327 / 2011-SM[BR]** dated 14.6.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S HERO CYCLES LTD. (CRD),
HERO NAGAR, G.T.ROAD,
LUDHIANA. (PB)

2. Adv. / Consult SHRI R.K.SHARMA REP.OF CO.
M/S RESPONDENT:-------------------

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. 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
Court No.III

Excise Appeal No.E/2679/09-SM

(Arsing out of Order-in-Appeal No.120/CE/LDH/2009 dated 3.7.2009 passed by the CCE (A), Chandigar)

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?	Yes
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

CCE, Ludhiana — Appellants

Vs.

M/s.Hero Cycles Ltd. — Respondent

Present for the Appellant: Shri Anil Khanna,SDR
Present for the Respondent: Shri R.K.Sharma, Rep.of Co.

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

Date of Hearing: 14.06.2011
Date of Decision: 14.06.2011

Final **ORDER NO.** 327/2011 SM (Br)

PER: M.VEERAIYAN

This is an appeal by the department against the order of the Commissioner (Appeals) insofar as the same related to setting aside the demand of interest (not quantified) on differential amount collected by way of issue of supplementary invoices due to rate variation clause contained in the contract.

2. Learned SDR submits that the interest is payable in such situation in the light of the decision of Hon'ble Supreme Court in the case of CCE, Pune vs. SKF India Ltd. reported in 2009 (239) ELT 385 (SC). Learned SDR fairly submits that the appeal by the department is only on the issue of interest on supplementary invoices and not in respect of other issues decided by the order of the Commissioner (Appeals).

3. The Authorised Representative of the respondent's company submits that the demand is time barred as the supplementary invoices were issued during the period 1.1.2003 to 31.3.2004 and the demand for interest was made by issuing show cause notice dated 30.8.07.

4. I have carefully considered the submissions and perused the records. The issue of the interest liability on price increase through supplementary invoices stands settled in favour of the Revenue by the Hon'ble Supreme Court in the case of SKF India Ltd. cited supra.

5. However, the demand of interest for the period 1.1.2003 to 31.3.2004 has been raised by show cause notice dated 30.8.07 and therefore the demand is clearly time barred.

6. The decision of the Tribunal in the case of Abhinav Industries vs. CCE, Jaipur reported in 2011 (264) ELT 538 relied upon by the

learned SDR related to the case where the duty demand is confirmed under Section 11A of Central Excise Act, 1944 and where it has been held that the interest is automatically payable. The facts of the said case are different from the facts of the present case and the same has no application to the present case.

7. In view of the above, the appeal is allowed on merits. However, the demand is held to be hit by limitation.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

mk