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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/737 /2006 - EX[DB]   Date 15/03/2011

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

To :
SURYA KIRAN ENGG.WORKS (P) LTD.
D-6, SECTOR-7,NOIDA

SURYA KIRAN ENGG.WORKS (P) LTD. Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.291/ 2011 EX[DB]** dated 03-3-11 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. NOIDA
C-56/42, SECTOR-62, NOIDA-
201307

2. Adv. / Consult
MR.S.D.GAUR
SB-108, SHASTRI NAGAR, GHAZIABAD.

3. C.D.R
4. Bar association. CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
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. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Court No. I

Date of Hearing/Decision: 03.03.2011

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 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?	
4	Whether Order is to be circulated to the Departmental authorities?	

Excise Appeal No. 737 of 2006

[Arising out of order in appeal No. 164/CE/Appl/Noida/06 dated 31.01.2006 passed by the Commissioner (Appeals) Customs & Central Excise, Noida].

M/s Surya Kiran Engg. Works (P) Ltd., Appellants
[Rep. by Shri S.D. Gaur, Consultant]

Vs.

CCE, Noida Respondent
[Rep. by Shri S. K. Panda, Jt. CDR]

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

FINAL ORAL ORDER NO. 291/2011-EX.

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

Heard learned Advocate for the appellants and DR for the respondent.

2. This appeal arises from order dated 31.01.2006 passed by the Commissioner (Appeals) Meerut. By the impugned order, the appeal which was filed by the appellants against the order of the adjudicating authority has been dismissed. The Assistant Commissioner, Noida by his order dated 30.09.2005 had ordered payment of interest amounting to Rs. 77,000/- for the delayed payment of duty and has imposed penalty of Rs. 20,000/- under Rule 25 of the Central Excise Rules, 2002.

3. The appellants are engaged in manufacture of electrical stamping, submersible pumps, electrical fans and electrical motors classifiable under chapter heading Nos. 8312.00, 8413.13. 8414.40 & 8501.00 respectively of the schedule to the Central Excise Tariff Act, 1985. The department noticed that the appellants had not paid the duty in accordance with the provisions of law comprised under Rule 8 and 12 of the Central Excise Rules, 2002 inasmuch as that the appellants had been paying full rate of duty on the goods cleared by them without availing benefit of exemption notification during the period from April 2004 to December 2004. The appellants had crossed the small scale exemption limit of Rs. 3 crores during the financial year 2003-04 and, therefore, they had become ineligible for taking benefit of the notification granting exemption based on value of clearances for home consumption by SSI units during the financial year 2004-05. Scrutiny of ER-1 returns for the said period revealed that the appellants availed the facility of filing ER-1 return on quarterly basis which is in contravention of

the provisions of Rule 12 of the said Rules. The appellants had not been paying the duty by 5th of the following month even after loosing the status of SSI unit. Consequently, the show cause notice dated 02.05.2005 came to be issued to the appellants which was contested by the appellants by filing their reply dated 31.05.2005. The Assistant Commissioner, Noida rejected the contentions sought to be raised by the appellants and confirmed the demand of interest to the tune of Rs. 77,000/- and imposed penalty of Rs. 20,000/- as stated above.

4. Learned Advocate for the appellants placing reliance in the decision of the **Lucid Colloids Limited** vs. **Union of India** reported in 2006 (200) ELT 377 (Raj.), of the Tribunal in the matter of **Sai Trading** vs. **CCE, Mumbai-II** reported in 2009 (241) ELT 233 (Tri. Mumbai) submitted that the provisions of law in relation to the calculation of interest @ Rs. 1,000/- per day has been struck down by the Rajasthan High Court holding it to be ultra vires and department therefore could have demanded the duty only @ 24% per annum for the delayed period and not @ Rs. 1,000/- per day. As regards the penalty the learned Advocate submits that the provision of Rule 25 of the said rules were not at all attracted in terms of Rule 27 of the rules.

5. The DR on the other hand, submitted that the rules have been amended subsequent to the decision of the Rajasthan High Court. However, he fairly conceded that the amended provision has not been made retrospectively effective.

6. Considering the fact that the Rajasthan High Court in **Lucid Colloids** case had clearly held that 'to the extent rule provides other than the rate of interest as an alternative mode of levy of interest per day not connected with the amount of duty in default is beyond the enabling power of the Parent Act and has further held that "Rule 8(3) to the extent it provides levy of interest @ Rs. 1,000/- which is higher as alternative to charge of interest @ 2% on the amount of duty means to be understood as 24% per annum on the amount of duty in default is ultra vires to Section 11AB of the Act and cannot be sustained and is held inoperative". Apparently, the authority below was not justified in confirming the demand of interest @ Rs. 1,000/- per day for the relevant period. Undisputedly, the amended rule does not apply to the relevant period. The authority below, therefore, would have confirmed the interest only within the permissible limit bearing in mind the decision of the Rajasthan High Court.

7. As regards the penalty is concerned, though it was sought to be contended on behalf of the department, the same is in terms of clause 4(d) of Rule 25. We find that there is no finding either by the authority below to the effect that the delay in payment of duty was with intention to evade the duty. In the absence of any such finding, obviously, the penalty under Rule 25(d) is not sustainable as rightly pointed out by the learned Advocate for the appellants. The penalty can be justified in terms of Rule 27 of the said rules and maximum limit thereunder is Rs. 5,000/- and not Rs. 20,000/-.

8. Therefore, the appeal succeeds. The impugned order to the extent it confirms the interest @ Rs. 1,000/- per day is hereby set aside and matter is

remanded to the Commissioner to recalculate the interest bearing in mind the law applicable to the facts of the case and the decision of the Rajasthan High Court. As regards the penalty, the impugned order is set aside and it is reduced to Rs. 5,000/-. The appeal is allowed in the above terms and remanded only in relation to the calculation of the interest amount. Accordingly, the appeal is disposed of as above.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

Pant