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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/707 /2006 - EX[DB]   Date **07/07/2011**

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

To :
M/S. A.G. INDUSTRIES PVT. LTD.
HSIDC INDL. AREA GP-9, SECTOR 18, GURGAON.

A.G. INDUSTRIES PVT. LTD. Appellant
Vs
C.C.E. DELHI III Respondent

I am directed to transmit herewith a certified copy of **Final order No.509/ 2011 EX|DB|** dated 07-6-11 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. DELHI III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)

2. Adv. / Consult
MR.RAM CHANDER CHOUDHARY,
H.NO. 1610, SECTOR-4, URBAN ESTATE, GURGAON-122001.

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. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi - 110005
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 (Harvana)
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
14. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 07/06/2011.
DATE OF DECISION : 07/06/2011.

Excise Appeal No. 707 of 2006

[Arising out of the Order-in-Appeal No. 447/GRM/GGN/2005 dated 08/12/2005 passed by The Commissioner of Central Excise (Appeals), Delhi – III, Gurgaon.]

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 would 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? : Seen
4. Whether order is to be circulated to the Department Authorities? : Yes

M/s A.G. Industries Pvt. Ltd. — Appellants

Versus

CCE, Delhi – III, Gurgaon — Respondent

Appearance

Shri R.C. Choudhary, Advocate – for the Appellants.

Shri S.R. Meena, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. 509/2011-EX Dated : ____________

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

Heard learned advocate for the appellants and DR for the respondent. This appeal arises from order dated 8th December 2005 passed by the Commissioner (Appeals), Gurgaon. By the impugned order the appeal filed by the appellants against the order passed by the Adjudicating Authority has been dismissed. The Additional Commissioner, Gurgaon by order dated 4th April 2005 had confirmed the demand to the tune of Rs. 13,92,477/- while appropriating the said amount already deposited. The Additional Commissioner also ordered recovery of interest and imposed equal amount of penalty. The appellants being aggrieved by the order in relation to the demand of interest and penalty carried the matter in appeal before the Commissioner (Appeals), Gurgaon which came to be rejected by the impugned order.

2. The facts relevant for the decision are that in the course of investigation and visit to the factory of the appellants on 24th September 2003, it was revealed that the appellants had procured capital goods like Moulds and dies during the period from 4th March 2003 to 29th March 2003 and had cleared the same on depreciated value by taking shelter of Board Circular No. 643/34/2002-CX dated 1st July 2002 readwith Board's letter F. No. 495/16/93-CUS VI dated 26th May 1993. It was also revealed that the appellants had taken Cenvat credit of Rs. 57,25,556/- at

had removed the same by paying duty of Rs. 44,77,027/- on the depreciated value. The appellants thereafter paid the differential duty by raising two supplementary invoices dated 27th September 2003 and 12th December 2003. Consequently, the show cause notice dated 21st September 2004 came to be issued which was contested by the appellants. However, the Adjudicating Authority rejected the contentions sought to be raised and confirmed the demand alongwith interest and penalty. In the appeal before the Commissioner (Appeals), the challenge to the order passed by the Adjudicating Authority was restricted to the imposition of penalty and interest. The Commissioner (Appeals) after having found that there was no dispute about the fact that appellants had paid the duty before issuance of the show cause notice but much after the due date held that the Adjudicating Authority was justified in demanding interest and imposing penalty.

3. The learned advocate for the appellants submitted that the appellants immediately after realising their mistake paid the balance of the duty even before issuance of the show cause notice and, therefore, it apparently disclosed absence of intention to evade the duty and hence there was no case either for demanding interest or for imposing penalty. Our attention was drawn to the decision of the Tribunal in the matter of **Greenply Industries Ltd. vs. CCE, Jaipur** reported in **2010 (259) E.L.T. 103 (Tri. – Del.)** and particularly to para 16 and 17 of the said decision.

4. The DR on the other hand submitted that once the appellants had not disputed the duty liability as well as the fact that there was delay in payment of duty merely because the same was paid before issuance of the show cause notice it cannot entitle the appellants to evade the liability of paying interest as well as penalty and in that regard drew our attention to the decision of Hon'ble Punjab and Haryana High Court in the matter of **CCE, Delhi – III vs. Machino Montell (I) Ltd.** reported in **2006 (202) E.L.T. 398 (P & H)** and the Hon'ble High Court of Himachal Pradesh in **CCE, Chandigarh vs. Him Chemicals & Fertilizers Ltd.** reported in **2010 (256) E.L.T. 363 (H.P.)** and of the Tribunal in the matter of **Hero Cycles Ltd. vs. CCE, Ludhiana** reported in **2011 (266) E.L.T. 110 (Tri. – Del.)**.

5. The records apparently disclose that the appellants had cleared the capital goods at the depreciated value and duty was paid accordingly but subsequently issued supplementary invoices and paid the differential duty. The fact that the duty element was passed over to the consumer and such consumer had availed the benefit of such credit is not in dispute. Besides appellants never challenged the duty liability as was paid in terms of supplementary invoices and the challenge was restricted only to the interest and penalty amount. Being so, the decision of the Tribunal in **Greeyply Industries Ltd.** (supra) case can be of no help at all to the appellants.

6. Once the duty liability is accepted and the fact that the ... the due date is not disputed

and such duty liability is cleared subsequent to the due date, it can hardly be disputed that such payment will have to be accompanied by the amount of interest. Once it is also not in dispute that the payment of differential amount of duty was paid only after inspection conducted by the departmental officers and the payment of differential duty was without any protest or any sort of explanation for delay in payment thereof, it would lead to the presumption about the intention to evade the duty. In the absence of any material to rebut the presumption, it cannot be said that the authorities erred in imposing the penalty. The decisions sought to be relied upon by the DR clearly support the view that we are taking in the matter.

7. In the facts and circumstances of the case, therefore, we do not find any case for interference in the impugned order and hence the appeal fails and is dismissed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

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