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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/1681/2005 & E/3906/2006 - EX[DB]   Date **27/05/2011**

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

To :
M/S A INFRASTUCTURE LTD
HAMIRGARH, DISTT. BHILWARA (RAJASTHAN)
311025

M/S A INFRASTUCTURE LTD Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.447-448/ 2011 EX|DB|** dated 25-5-11 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. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.L.P. ASTHANA & MS REENA KHAIR
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

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

Assistant Registra
(Excise Appeal Branc

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.II

E/Appeal No.1681/05 & E/A 3906/06

(Arising out of order in appeal No.112RM)CE/JPR.11/05 dated 18.2.2005 passed by the Commissioner of Central Excise (Appeals), Jaipur)

Date of Hearing: 11.5.2011

For Approval and signature:

Hon'ble Mr D.N. Panda, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

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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? No
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? No

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M/s A. Infrastructure Appellants

Vs

CCE, Jaipur Respondent

Appeared for the Appellant: Shri L.P. Asthana, Advocate
Appeared for the Respondent: Shri Sunil Kumar, SDR

Coram: **Hon'ble Mr D.N. Panda, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

FINAL ORDER 447-448/2011-EX

Per D.N. Panda:

In these two appeals, the short point arises for consideration is whether the average rate of interest shall be admissible as deduction while arriving at the assessable value or the actual interest receivable shall be deducted from the assessable value, on account of interest on receivables.

2. Such an issue was initially before the Hon'ble Supreme Court coupled with a dispute about whether interest is to be computable with the lapse of time. So far as the admissibility of deduction is concerned, in the case of the appellant reported in 2004 (167) ELT 369 (SC), Hon'ble Supreme Court following three earlier judgments, came to the conclusion that the interest on receivable is to be deducted while determining assessable value. This is patent from para 9 of the judgment. For calculation of interest and to ascertain its quantum para 10 of the judgment has dealt with that aspect. Hon'ble Court has also remanded the matter to ascertain claim of receivable on the basis of time lapse between the delivery of goods and realizing of monies.

3. While the matter stood as above, the controversy came before us is to decide the quantum of deduction available to the appellant when in the remand proceeding the appellant did not succeed before authorities below. There was conflicting stand of Revenue at different times with proposition that average rate is admissible and also actual quantified amount is admissible.

While judgment of Apex court was clear on the point, Learned Authorities below failed to implement Apex Court judgment in proper spirit. When the appellant came forward to claim deduction in respect of interest receivable on each invoice on actual basis, that should have been well decided without applying an average formula as per ratio laid down by Apex Court. Interest being time related and also value based, that has been held to be admissible deduction. Once the claim of the appellant is in relation to the time elapsed to recover the consideration of sale, the appellant can not be ~~is not~~ denied of deduction.

3. Shri L.P. Asthana, learned Counsel submits that the appellant requires direction for deduction of interest receivable in respect of the amount involved in each invoice without any arbitrary percentage as has been misconceived by Authorities below. Therefore, he submits that the first appellate order which has caused undesired impediment applying average rate of interest, should be annulled.

4. On the other hand, learned DR submits that taking into consideration of the Apex Court judgment cited above, the Tribunal has in the case GEC Alsthom India Ltd Vs CCE, Tiruchirapalli reported in 2009 (241) ELT 284 (Tri Chen), Castrol India Ltd Vs CCE Chennai reported in 2007 (216) ETL 30 9Tri. Chen) and CC Bangalore Vs Bangalore Paints Ltd reported in 2008 (231) ELT 460 (Tri. Chen) held that interest on receivable is not admissible in those cases.

5. Heard both sides. We have carefully considered the three citations made by Revenue. All the three cases dealt with the case where there was no clear evidence of price charged by assesses. But that is not the case in the present appeal. Therefore, the citations made by Revenue are misplaced.

6. There being no dispute about the admissibility of deduction of interest on receivables from the assessable value in the case of the appellant and the matter having been well settled by the judgment of Apex Court in the own case of the appellant, deduction of actual interest receivable in respect of each invoice is to be allowed. This is possible interpretation that Revenue has to make to reduce the litigation when the Apex Court in no uncertain terms laid down the law in paras 9 and 10 of the judgment and made it clear that the deduction is undeniable.

7. Learned DR submitted that interest has to be shown separately in the invoice. But such a plea is not supported by law when no provision of law was shown to us for appreciation. Once the deciding factor is lapse of time in between the delivery of goods and realization of money, that becomes basis for calculation of interest in respect of each amount involved in the invoice concerned. Our observation above calls

for setting aside the order of the appellate authority below. We order accordingly and allow appeal of the appellant.

(Order dictated and pronounced in the open Court.)

(D.N. PANDA)
Member (Judicial)

(MATHEW JOHN)
Technical Member

MPS*