

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2552/2006 - EX[DB] &
E/1113/2007-EX

Date 11/07/2011

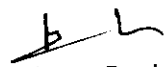
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.
C.C.E. JAIPUR I

Appellant
Vs
Respondent

M/S MAN STRUCTURAL LTD.

I am directed to transmit herewith a certified copy of **Final order No.594-595/ 2011 EX[DB]** dated 06-7-11
passed by the Tribunal under **Section 35-C(1) of Central Excises Act, 1944**


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S MAN STRUCTURAL LTD.
NEAR LOCO RAILWAY STATION
JAIPUR RAJASTHAN

2. Adv. / Consult
MR.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

3. C.D.R
4. Bar association. CESTAT, New Delhi
5. Director Publications. Customs. Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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)

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

PRINCIPAL BENCH

COURT-1

Excise Appeal No.2552 of 2006 &

Excise Appeal No.1113 of 2007

(Arising out of Order-in-Appeal No.134(MPM) CE/JPR-I/2006 dated 21.04.06 and No.22 (GRM) CE/JPR-I/2007 dt.7.2.2007 passed by the CCE(A), Jaipur)

For approval and signature:

Hon'ble Hon'ble Mr. Justice R.M.S.Khandeparkar, President

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?	Yes
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

CCE, Jaipur

Appellant

Vs.

M/s.Man Structural Ltd.

Respondent

Present for the Appellant: Shri R.k.Verma, DR

Present for the Respondent: Shri S.Yadav, Advocate

Coram:Hon'ble Mr.Justice R.M.S.Khandeparkar, President

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

Date of Hearing: 06.07.2011

Date of Decision: 06.07.2011

FINAL ORDER NO. 594-595/2011-EX

PER: M.VEERAIYAN

These two appeals are filed by the departments which are inter-connected.

2 Heard both sides.

3 The respondents defaulted in payment of duty during the period December, 2000 and January, 2001 and consequently the Assistant Commissioner issued order dated 19.2.2001 debarring the respondents from utilization of credit and directing them to pay duty through PLA on consignment basis. The period of debarment was 20.2.01 to 20.4.01. During this period, the respondents continued to utilize the credit amounting to Rs.19,78,043/-. The respondents filed refund claim for a sum of Rs.3,53,171/- which was debited through PLA on 26.4.01 out of amount of Rs.4 lakh deposited by TR-6 challan and credit ^{of which} was taken in PLA. The said claim was rejected by the original authority on the aspect of time bar. On appeal by the party, the Commissioner (Appeals) has held that the payment of duty of Rs.4 lakhs under TR-6 Challan was under protest though the debit of Rs.3,53,171/- was not made under protest and allowed the refund claim.

4. Learned DR submits that the respondents were required to pay totally Rs.19,78,043/ during this period of two months out of which Rs.3,53,171/- was paid in PLA and the balance amount was paid using credit which was demanded by the original authority alongwith interest as the utilization of credit was in clear violation of debarment order which was consequent to default in payment. The Commissioner (Appeals) erred in dropping the demand. He also submits that the duty of Rs.3,53,171/- was payable and not at all refundable in the first place and there is no question of double payment by the respondents. An amount of Rs.4 lakhs paid by the TR-6 challan was taken as credit in the PLA and out of which what was debited was Rs.3,53,171/- which was the actual payment to the Government. This amount in any way

was due to be paid and therefore even on merits, the claim was not admissible.

5 Learned Advocate for the respondents submits that in terms of decision of the Larger Bench of the Tribunal in the case of Noble Drugs Ltd. vs. CCE, Nasik reported in 2007 (215) ELT 500, during the default period, the respondents were entitled to discharge the duty liability utilizing credit and failure in this regard does not attract interest liability and penalty.

6. We have carefully considered the submissions from both sides and perused the records. It is not disputed by the respondents that there were defaults in payment of duty during certain period and there was debarment order issued by the competent authority in pursuance of powers vested under the Central Excise Rules. It is also not disputed by the respondents that they have not filed any appeal against this order, though the same was appealable. It appears that the decision of Larger Bench of the Tribunal involved a case where there was no specific order of debarment which has not been followed by the assessee. We further find that the debarment order has been issued validly debarring them using the credit for two months. By implication, the credit barred from utilization was available after two months and therefore matter requires regularization. Therefore, the respondents are directed to pay the interest as demanded in the order of the original authority. The demand of duty equivalent to credit which was debarred by two months and allowed to be utilized thereafter will amount to double payment. We therefore restore the order of the original authority in so far as it related to demand of interest for two months only.

7. Regarding the second appeal challenging the allowing the refund of Rs.3,53,171/- which was paid on 24.6.01, we find that the show cause notice itself demanded only the amount of Rs.16,24,872/- on the ground that the same was paid using credit. We have not been shown that the respondents has paid another amount of Rs.3,53,171/- thereafter. Therefore, we are unable to find the basis on which the Commissioner (Appeals) came to the conclusion that there was double payment. He only refers to the payment of Rs.4 lakhs under TR-6 Challan which has been taken as credit in PLA. The debit has been made, as per PLA extracts enclosed for an amount of Rs.3,53,171/- on 24.6.01. Further, we find that original authority has taken the stand that Rs.3,53,171/- was not paid under protest and there is no indication of protest from the PLA extracts. Therefore, the order of the Commissioner (Appeals) sanctioning the refund on the ground that there was double payment is erroneous. The order of the Commissioner (Appeals) cannot be sustained and the same is set aside and the order of the original authority is restored.

8. The appeals are disposed of as above.

(JUSTICE R.M.S.KHANDEPARKAR)

PRESIDENT

(M.VEERAIYAN)

MEMBER (TECHNICAL)

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