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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/160 /2011 - EX[DB] Date **08/08/2011**

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

To :
M/S ANAND AGROCHEM INDIA LTD.
VILL: GOPI, G.T.ROAD, ALIGARH (U.P.)

M/S ANAND AGROCHEM INDIA LTD. Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order** No.709/ **2011 EX[DB]** dated 05-8-11 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. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.RAJ KUMAR CA, FCA,
U-18, PAWAN PLACE, SAMAD ROAD, ALIGARH

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 (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
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

Excise Appeal No. 160 of 2011

[Arising out of the Order-in-Appeal No. 446-CE/LKO/2010 dated 20/12/2010 passed by The Commissioner (Appeals), Central Excise & Service Tax, Lucknow.]

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?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Anand Agrochem India Limited — Appellant

Versus

CCE, Lucknow — Respondent

Appearance

Shri Raj Kumar, C.A. – for the appellant.

Shri I. Beg, Authorized Representative (DR) - for the Respondent.

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

DATE OF HEARING : 28/07/2011.
DATE OF DECISION : 5/8/11

FINAL Final Order No. 709/2011-EX Dated : 5/8/11

Per. Rakesh Kumar :-

The appellant, a manufacturer of cane sugar chargeable to Central Excise duty, defaulted in discharging of monthly duty liability in terms of Rule 8 (1) of Central Excise Rules, 2002 for the months of July 2007, August 2007 and September 2007 and the default continued even beyond the period of 30 days from the due date. They, however, discharged the duty liability alongwith interest for the period of delay. The Department, however, issued a show cause notice dated 14/5/09 for imposition of penalty on them under Rule 25 (1) (a) and Rule 27 of Central Excise Rules, 2002. The penalty was sought to be imposed on the ground that the appellant have violated the provisions of Rule 8 (3A) of Central Excise Rules, 2002 by not discharging the Central Excise duty consignmentwise during the forfeiture period i.e. the period of delay in discharge of monthly duty liability beyond 30 days from the due date when the assessee is required to pay the duty consignmentwise and in cash. The show cause notice was adjudicated by the Joint Commissioner vide order-in-original dated 31/3/2010 by which penalty of Rs. 34,96,858/- was imposed on the appellant under Rule 25 (1) (a) of Central Excise Rules, 2002. No penalty was imposed under Rule 27 as penalty under Rule 25 (1) (a) had been imposed. The penalty imposed is equal to the amount of duty which had not been paid by the due date. On appeal to Commissioner (Appeals), the Joint

Commissioner's orders upheld. Against this order of the Commissioner (Appeals), the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Raj Kumar, C.A., the learned Counsel for the appellant, pleaded that while there was default in discharge of duty liability for the months of July 2007, August 2007 and September 2007 and the default had continued beyond the period of 30 days from the due date, subsequently the appellant had paid the entire amount of duty alongwith the interest as per the provisions of Rule 8 (1) of Central Excise Rules, that the provisions of Rule 8 (3A) are not attracted, as during the forfeiture period, they had been paying duty consignmentwise and without availing Cenvat credit, that penalty under Rule 25 (1) (a) is not attracted just for default in payment of duty, as when during the forfeiture period, the duty had been paid consignmentwise and without availing Cenvat credit, there are no deemed clearances without payment of duty and, hence, the provisions of Rule 25 (1) (a) would not be attracted, that at the most penalty could be imposed under Rule 27 where the maximum penalty is Rs. 5,000/-, that penalty equal to the amount of defaulted amount imposed under Rule 25 (1) (a) is excessive, more so when the entire amount had been paid alongwith the interest and there were genuine reasons for default, that Tribunal in the case of **CCE, Hyderabad vs. Anjani Portland Cement Indus. Ltd.** reported in **2011 (266) E.L.T. 343 (Tri. – Bang.)** has held that default in payment of duty, when the defaulted amount had been paid with interest, would not attract penalty under Rule 25 of Central Excise Rules, 2002, that the ratio of this judgment is squarely applicable to the facts of this case, that Hon'ble Gujarat High Court in the case of **CCE & CUS. vs. Saurashtra Cement Ltd.** reported in **2010 (260) E.L.T. 71 (Guj.)** has held that for default in discharge of monthly duty liability, penalty under Rule 25 (1) is not attracted and only penalty under Rule 27 could be imposed, and that in view of this, the impugned order is not correct.

2.2 Shri I. Beg, the learned Senior Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) in the impugned order and emphasised that the appellant's plea that non-discharge of monthly duty liability by the due date was due to acute financial crises is not a ground for not imposing penalty, that for imposition of penalty under Rule 25 (1) (a) no mens-rea is required to be proved, and that in view of this, there is no infirmity in the impugned order.

3. We have carefully considered the submissions from both the sides and have perused the records.

4. Under Rule 8 (3A) of Central Excise Rules, 2002, if an assessee defaults in payment of duty beyond 30 days from the due date, as prescribed in sub-rule (1), then notwithstanding anything contained in the said sub-rule (1) and sub-rule (4) of Rule 3 of Cenvat Credit Rules, 2004, the assessee shall pay excise duty for each consignment at the time of removal without

utilising Cenvat credit till the assessee pays the outstanding amount including interest thereon and in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and consequences and penalties as prescribed in these rules shall follow. The due date for payment of duty for a particular month is the 5th of the next month and thus, if an assessee fails to discharge the monthly duty liability in full beyond period of 30 days from the due date, he forfeitures the facility to pay duty in monthly instalments and by availing Cenvat credit and during such forfeiture period, he is required to pay duty consignmentwise and through PLA and if he does not do so, such clearances would be treated as clearances without payment of duty and consequences and penalties as provided in these rules shall follow. Thus, the clearances made during forfeiture period by paying duty through Cenvat credit account or in respect of which duty had not been paid consignmentwise but had been paid on monthly basis, would be deemed to be the clearances without payment of duty and in that case, penalty under Rule 25 (1) (a) would be attracted. In this case, the allegation against the appellant is that they have violated the provisions of Rule 8 (3A) by not discharging the duty on consignment basis. However, the appellant's contention is that during forfeiture period, they were paying the duty consignmentwise and through PLA and neither in the order-in-original nor in the impugned order-in-appeal there is any discussion as to how the appellant's plea that during forfeiture period they had paid duty consignmentwise and without utilising cenvat credit is incorrect. In any case, a penalty equal to the duty which had not been paid is too harsh when the entire duty liability to July 2007, August 2007 and September 2007 had been discharged alongwith interest. Moreover in view of Hon'ble Gujarat High Court's judgment in the case of **CCE & CUS. vs. Saurashtra Cement Ltd.** (supra) for delay in payment of duty by the due date only the penalty under Rule 27 is imposable and not the penalty under Rule 25. In view of this, the penalty equal to the duty which had not been paid by the due date is not sustainable. The same is **reduced to Rs. 5,000/- (Rupees Five Thousand)**. The appeal is partly allowed.

(Order pronounced in the open court on 5/8/11.)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK