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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/842 /2011-845 /2011 - EX[DB] WITH E/S/1026-1029/2011-EX Date **09/08/2011**

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

To :
M/S DONY POLO UDYOG LTD.,
SHAMGARH, DISTT. MANDSOUR.

M/S DONY POLO UDYOG LTD., Appellant
Vs
C.C.E. INDORE **STAY ORDER NO. 801-804/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.721-724/ 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. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.RAMESH NAIR
LAKSHMI VIHAR, AG- 192, SCHEME NO. 54,
VIJAYNAGAR, INDORE(MP)

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 Stay Application No. 1026-1029 of 2011 in Appeal No. 842-845 of 2011

[Arising out of the Order-in-Appeal No. IND-12 to 15/2011 dated 18/01/2011 passed by The Commissioner (Appeals), Central Excise, Indore.]

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 Dony Polo Udyog Ltd. — Appellant

Versus

CCE, Indore — Respondent

Appearance

Shri Ramesh Nair, Adovcate – for the appellant.

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)

DATE OF HEARING : 05/08/2011.
DATE OF DECISION : 05/08/2011.

STAY Order No. 304/2011-EX
Final Order No. 721-724/2011-EX Dated : 05/08/2011

Per. Rakesh Kumar :-

The appellant are manufacturers of Railway concrete Sleeper chargeable to Central Excise Duty and which are supplied by them to railways against a contract. The supply contract has price variation clause. The period of dispute in these appeals is from April 2006 to March 2009. The appellant at the time of clearance had paid duty on the contract price and subsequently when the price was revised from back date in terms of the price variation clause in the contract and they received the escalation amount on account of price variation from back date, they paid Central Excise duty on the same under supplementary invoices. However, at that time they did not pay the interest on duty under Section 11AB. Four show cause notices for different periods were issued to the appellant for demand of interest, which were confirmed by the Assistant Commissioner. On appeal to Commissioner (Appeals), the Commissioner (Appeals) by a common order-in-appeal No. IND/12-15/2011 dated 18/1/2011 dismissed the appeals. The total amount of interest upheld by this order is Rs. 3,89,489/- (Rs. 2,03,630/- + 97,788/- + 47,392/- + 40,679/-). Against this order of the Commissioner (Appeals), these four appeals alongwith stay applications have been filed. Though today these matters have been listed for hearing of the stay applications only, since the issue involved in this case is squarely covered by the judgment of Hon'ble

Supreme Court, it was decided to take up these matters for final hearing. Accordingly, these matters were heard for final disposal after weaving the pre-deposit.

2. Shri Ramesh Nair, Advocate, the learned Counsel for the appellant, pleaded that interest on the differential duty paid under supplementary invoices on escalation amount received is not payable in view of judgment of Hon'ble Karnataka High Court in the case of **CCE, Bangalore – III vs. Bharat Heavy Electricals Ltd.** reported in **2010 (257) E.L.T. 369 (Kar.).** However, Shri S.R. Meena, the learned Departmental Representative pleaded that the issue involved in this case is no longer res-integra and the same stands decided fully in favour of the Department by the judgments of Hon'ble Supreme Court in the case of **CCE, Pune vs. SKF India Ltd.** reported in **2009 (239) E.L.T. 385 (S.C.)** and **CCE vs. International Auto Ltd.** reported in **2010 (250) E.L.T. 3 (S.C.)**, wherein it was held that payment of duty on the escalation charges on account of price variation from back date is the payment under the provisions of Section 11A (2B) of the Central Excise Act, 1944 and, hence, alongwith this duty, the interest chargeable as per the provisions of Section 11AB would be attracted.

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

4. The issue involved in this case is squarely covered by the judgments of Hon'ble Supreme Court in the cases of **CCE, Pune**

vs. SKF India Ltd. (supra) and **CCE vs. International Auto Ltd.** (supra). In view of this, we do not find any infirmity in the impugned order. The appeal is, therefore, dismissed.

(Operative part of the order pronounced in the open court.)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK