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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

Date **02/04/2012**

Appeal No. E/2532/2011 - EX[DB] WITH
E/S/3282/2011-EX

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

To :
M/S MONTAGE ENTERPRISES PVT.LTD
29-A, GHIRONGI INDUSTRIAL AREA, MALANPUR,
DISTT- BHIND(MP)

M/S MONTAGE ENTERPRISES PVT.LTD Appellant
Vs
C.C.E. INDORE Respondent

STAY ORDER NO. 577/2012-EX

I am directed to transmit herewith a certified copy of **Final order No.** A/388/ **2012 EX[DB]** dated 23-3-12 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.ARVIND ARORA,ADVOCATE
H.NO 432, SECTOR-16A, FARIDABAD.

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-3
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

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. 3282 of 2011 in Appeal No. 2532 of 2011

[Arising out of the Order-in-Appeal No. IND/CEX/000/APP/309/2011 dated 28/07/2011 passed by The Commissioner (Appeals), Customs & Central Excise, Indore.]

For Approval and signature :
Hon'ble Shri Justice Ajit Bharihoke, 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 Montage Enterprises Pvt. Ltd. — Appellant

Versus

CCE, Indore — Respondent

Appearance

Shri Arvind Arora, Advocate – for the appellant.

Shri R.K. Verma, Authorized Representative (DR) - for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 23/03/2012.
DATE OF DECISION : 23/03/2012.

STAY order No. 577/2012-EX(BR)
FINAL Order No. A/388/2012-EX(BR) Dated : ____________

Per. Rakesh Kumar :-

The appellant manufacturing goods falling under Chapter 39 of the Central Excise Tariff had during April 2006 to December 2006 period supplied the goods to their customers against contracts. Subsequently, in the cases where the prices had been increased with retrospective effect, the appellant received escalation amount and at that time, while they paid the differential duty on the escalation amount under supplementary invoices, they did not pay the interest chargeable under Section 11AB on the differential duty paid which was Rs. 9,01,128/-. On the non-payment of interest being detected, a show cause notice dated 09/10/09 was issued to the appellant for its recovery, which was adjudicated by the Additional Commissioner vide order-in-original No. 06/ADC/CX/IND/10-11 dated 17/3/11 by which the interest demand of Rs. 9,01,128/- was confirmed under Rule 8 of the Central Excise Rules, 2002 and beside this, penalty of Rs. 90,00,000/- was imposed on them under Rule 25 (1) of the Central Excise Rules, 2002. On appeal against the Additional Commissioner's order, the Commissioner (Appeals) vide order-in-appeal dated 27/7/11 reduced the penalty to Rs. 9,01,128/- on the ground that prior to the personal hearing before him, the appellant had paid the interest. Against this order of the Commissioner (Appeals), this appeal alongwith stay application has been filed.

2. Though this matter was today listed for hearing of stay application only, after hearing both the sides for sometime, we are of the view that this matter can be taken up for final disposal. Accordingly, with the consent of both the sides, the matter was heard for final disposal after waiving the requirement of pre-deposit.

3. Shri Arvind Arora, Advocate, the learned Counsel for the appellant, pleaded that the appellant at the time of receipt of escalation amount had paid the differential duty under the supplementary invoices on their own and at that time they were under impression that no interest under Section 11AB is payable on the differential duty paid under supplementary invoices as the duty at the time of clearances had been correctly paid, that subsequently when the department pointed out, they paid the interest, though after the adjudication of the matter and that their case is covered by the provisions of Section 11A (2B) and , hence, no penalty is imposable on them.

4. Shri R.K. Verma, the learned Senior Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) in it and emphasised that since at the time of payment of differential duty under supplementary invoices, the interest as per the provisions of

Section 11AB was not paid, penalty under Rule 25 (1) of Central Excise Rules, 2002 would be attracted.

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

6. In this case there is no dispute that the appellant had paid the differential duty under supplementary invoices on the escalation amount received in respect of goods cleared and this had been done on their own. The original Adjudicating Authority also has treated the failure to pay the interest at the time of payment of duty under supplementary invoices, as default under Rule 8 of the Central Excise Rules. However, for failure to pay interest alongwith delayed payment of duty under Rule 8 no penalty is imposable under any clause of Rule 25 (1) of Central Excise Rules, as this clause provides for imposition of penalty for–

(a) removal of excisable goods in contravention of the provisions of these rules or the notifications issued under these Rules ;

(b) non-accountal of excisable goods produced or manufactured or stored ;

(c) manufacture of excisable goods without registration and

(d) contravention of any provisions of these rules or of the notification issued under these Rules with intent to evade the payment of duty;

and in this case, in our view the appellant's failure to pay interest on the differential duty paid under supplementary invoices on the differential amount received on account of price revision does not fall in any of these contraventions. Moreover, we find that the appellant had paid the interest, in question, before the hearing of their appeal by the Commissioner (Appeals). In view of this, the impugned order upholding the penalty on the appellant is not sustainable. The same is set aside. The appeal as well as stay application is allowed.

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

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK