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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-26-2010

Judge : The Honourable Mr. M. Veeraiyan, Member (Technical)

Appeal No. : Excise Appeal No. 1090-1092 of 2008-SM(BR), Excise Cross Objection No. 341 of 2008-SM(BR)

Appellant : C.C.E., Faridabad

Respondent : M/S. Friends Auto (India) Ltd. and Others

Advocate for Pet/Ap. : Shri S.K. Bhaskar, DR for the Appellants.

Judgement :

Per M. Veeraiyan:

The three appeals filed by the Department and Cross Objection filed by M/s. Dee Ess Buhin (P) Ltd. relating to Appeal No. E/1092/2008 involve the same issue and therefore, they are being disposed off by this common order.

2. None appears for the respondent M/s. Xpro India Ltd. inspite of notice.

3. Heard the learned Consultant on behalf of respondents M/s. Friends Auto (India) Ltd. and M/s. Dee Ess Buhin (P) Ltd.

4. Both sides agree that the issue relating to chargeability of interest on differential duty payable on amount collected by issue of supplementary invoices after

clearance of goods stand settled by the Supreme Court in the case of CCE Pune vs. SKF India Ltd. reported in 2009 (239) ELT 385 (SC) and the demand of interest would be subject to bar of limitation. It is also held in the said decision that no penalty is imposable.

5. In view of the above, the appeals by the Department are allowed on merits holding that interest shall be liable on differential duty payable on supplementary invoices in respect of said goods. However, such demand shall be reworked subject to bar of limitation and for this purpose, the matter requires to be remanded to the original authority. In view of the above, orders of the Commissioner (Appeals) and orders of original authority set aside and the matter remanded to consider the aspect of time bar in respect of demands made.

5.2 In the nature of case, the question of imposition of penalty does not arise. Therefore, the penalties are set aside. The cross objection No. 341/2008 is basically in support of order of the Commissioner (Appeals) and the same is also disposed of.

6. The appeals and the Cross objection are disposed of in the above terms.

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