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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-07-2010

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

Appeal No. : Excise Appeal No. 937-938 of 2008-SM(BR)

Appellant : M/S. Deepak Transformers and Another

Respondent : Commissioner of Central Excise, Jaipur

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

Judgement :

Per M. Veeraiyan:

Both these appeals involve identical issues and, therefore, the same are being disposed of by this common order.

2. Heard both sides.

3. The appellants supplied excisable goods to customers like State Electricity Board as per contract containing price escalation clause. Subsequently, due to revision in prices, they paid the differential duty on the additional amounts

collected. There was no dispute on liability to payment of differential duty. The original authority confirmed recovery of interest with reference to date of clearance of the consignment and due date on which duty ought to have been paid. Original authority also imposed penalty on both the appellants. Commissioner (Appeals) confirmed the order of the original authority in so far as the same relates to recovery of interest. However, he set aside the penalties on the appellants.

4. Both sides agree that the issue regarding interest liability on price increase effected by issue of supplementary invoices is no more res integra as the same has been settled by the Hon ble Supreme Court in the case of CCE, Pune vs. SKF Ltd. reported in 2009 (239) ELT 385. However, the learned Advocate for the appellants submits that the interest liability has to be determined with reference to the provisions relating to limitation. Learned DR has submitted that the issue of limitation has not been raised before the authorities below.

5. In view of the above, on merits, I hold that interest on differential duty is payable as held by the Apex Court in the case of SKF Ltd. cited supra. However, the matter has to be reconsidered by the original authority on the plea of time bar. To enable the same, I set aside the orders of the authorities below and remand the matter to the original authority with the direction that the matter should be decided afresh after taking into account the plea of limitation and after affording reasonable opportunity of hearing to the appellants. It is clarified that no views are expressed on the issue of applicability of limitation on the interest liability.

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