

**SUPREME COURT OF INDIA**

Commr. of Central Excise, Haldia

Vs.

M/s. Exide Industries Ltd.

C.A.No.4977 of 2008

(S.H. Kapadia and Aftab Alam JJ.)

16.01.2009

**ORDER**

1. This Civil Appeal concerns quantification of penalty under Section 11AC of the Central Excise Act, 1944. The issue is squarely covered by the judgment of this Court in the case of *Union of India Vs. Dharmendra Textile Processors & Ors.*<sup>1</sup>.

2. At this stage, learned counsel for the assessee states that he is challenging the very levy of penalty on the facts and circumstances of the case. He seeks time to put in counter. His application is rejected for the simple reason that in this Civil Appeal, we are concerned with the quantum of penalty and not with the levy of penalty. As regards levy of penalty, the Tribunal has rejected the contention of the assessee that penalty is not leviable. However, that decision of the Tribunal has not been challenged by the assessee. Hence, our order allowing this Civil Appeal will not come in the way of the assessee challenging the order of the Tribunal on the question of imposition of penalty. However, we express no opinion on the merits of that case.

Subject to above, Civil Appeal is allowed.

<sup>1</sup>2008 (13) SCALE 233