IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/1332/2009-EX[SM]

(Arising out of Order-in-Appeal No.236-CE/MRT-II/2008 dated 22/12/2008 passed by Commissioner (Appeals), Customs & Central Excise, Meerut)

M/s Kitply Industries Ltd. **Appellant**

Vs.

Commissioner (Appeals), Customs & C. Excise, Meerut-II Respondent

<u>Appearance:</u>

Shri M.B. Mathur for Appellant
Shri Mohd. Altaf, Assistant Commissioner (AR), for Respondent

<u>CORAM:</u>

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing : 13/09/2018
Date of Pronouncement : 25/10/2018

FINAL ORDER NO. **72492 / 2018**

Per: Archana Wadhwa

After hearing both the sides duly represented by Shri M. B. Mathur appearing for the appellant and Shri Mohd. Altaf appearing for the Revenue, I find that initially there was dispute between the appellant and the Revenue as regards the correct classification of Ceiling Tiles manufactured by them. Whereas the appellant was claiming the classification under Sub-heading No. 4410.90 of Central Excise Tariff Act, 1985, the Revenue proposed classification under Sub-heading 4406.20 attracting 10% advalorem duty.

2. The Original Adjudicating Authority upheld the classification proposed by the Revenue as against the appellant's claim of classification attracting nil rate of duty. The appellant during the period from March 1994 to September 1994 paid the duty under protest, by addressing a letter to their jurisdictional Central Excise Authority. The matter was also taken up in appeal before Commissioner (Appeals), who set aside the classification adopted by the Original Adjudicating Authority.

3. In terms of the above order of the Commissioner (Appeals), the appellant filed a refund claim of Rs.5,06,164.30 vide their letter dated 16.12.1994. It is also seen that order of Commissioner (Appeals), was appealed against by the Revenue before Tribunal who vide their Final Order No.1057/99-D dated 23.12.1999 rejected the appeal. Subsequently, the department vide his Order No.76 dated 31.12.2001 accepted the classification upheld by the Tribunal and confirmed the goods as falling under heading 4410.90 in respect of the classification filed by the appellant from time to time.

4. Inasmuch as the refund claim filed by the appellant was never sanctioned by the Revenue, they took the same

on its own after informing the department. They were issued a Show Cause Notice dated 21.07.2006 proposing to deny the self-entry made by the appellant in their credit accounts. The same stands rejected by the impugned order of the authorities below.

5. On going through the orders of the Commissioner (Appeals), I find that he has observed that inasmuch as the assessee has not produced the original duty paying documents as well as invoices etc. the refund is not admissible to them. He has also observed that as the appellant has taken *suo-moto* credit, the credit has to be disallowed.

6. I find that after the success of their case before the Tribunal, the appellant immediately applied for refund claim vide their application dated 16.12.1994. The said refund claim of the assessee was not sanctioned and considered till 13.08.2005. Thereafter, the appellant took the *suo-motu* credit. There is no explanation by the Revenue as to why a claim received by them in 1994 was not decided in the period of more than 9 years thus compelling the assessee to take the *suo-moto* credit. In any case and in any way of the matter it is not informed to me as to whether the matter is still pending or decided. In such a scenario, I deem it fit to set aside the

order and remand the matter to Original Adjudicating Authority to implement the Tribunal's order and to decide the refund application as soon as possible.

7. The appeal is disposed of in above manner.

(Pronounced in Court on 25/10/2018)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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