FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 24/03/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70293/2017-SM[BR] dated 16/03/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/802/2008	**R.S. CHEMICALS** E-28, SITE-C, SURAJPUR, G.B.NAGAR. (U.P.)
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To
3Advocate(s) / Consultant(s):

SHUBHAM AGARWAL,ADV
3B/3, BANK ROAD, KATRA,
ALLAHABAD

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal No. E/802/2008-EX[SM]

Arising out of Order-in-Appeal No. 2/CE/APPL/NOIDA/2008 dated 11.01.2008 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II (Noida).

R.S. Chemicals ...APPELLANT

VERSUS

The Commissioner of Central Excise, Noida ...RESPONDENT

APPEARANCE

Shri Shubham Agarwal, Advocate for the Appellant
Shri Sandeep Kumar Singh, Deputy. Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 16. 03. 2017

FINAL ORDER NO.- 70293/2017

Per Mr. Anil Choudhary :

The issue in this appeal by the appellant-assessee, who is a manufacturer of Industrial Thinner and Organic Compound Solvent is that whether they are entitled to refund of Rs. 2,59,410/- which have been rejected by the impugned order in appeal on the ground of limitation.

2. The brief facts are that the appellant was availing SSI exemption during the period 2002-03 and 2003-04. On some of the clearances, the appellant paid concessional rate of duty @ 9.6% whereas on some of the clearances they paid normal rate of 16%. Pursuant to objection

by audit party that SSI exemption is wrongly availed under notification No.9/2002–CE as amended, The appellant agreeing to the said objection calculated the differential duty at Rs.6,68,250/- and debited the same in their Cenvat account–RG23A Pt-II No. 121 dated 03/12/2003. Subsequently, the Revenue demanded interest. On such demand, the appellant requested for calculation sheet of the exact tax liability. In response thereto vide communication dated 27/10/2005, the Range Superintendent informed that the differential duty payable was Rs.4,08,431/-. It is further stated by the counsel for the appellant that the interest amount on the said differential duty was worked out at Rs.80,910/- as stated in Page 1 of the Order-in-Original dated 18/07/2007 and the said amount of interest have been separately paid by challan. The appellant took *suo-moto* credit of the amount excess paid Rs.2,59,419/- debited earlier on 03/12/2003. Vide letter dated 10th May, 2006. The Range Superintendent objected to the taking of *suo-moto* credit referring to the ruling of this Tribunal in ***Prema Cables (P) Ltd. Vs. CCE Mumbai 2004 (168) ELT 120 (Tri. Mumbai)*** and directed the appellant to reverse the credit taken and may resort to the process of refund. In compliance, the appellant debited the amount of Rs.2,59,410/- and claimed refund vide separate application dated 20/07/2006. The Revenue objected to the refund claimed as time barred vide SCN dated 25/01/2007 and the same was adjudicated vide Order-in-Original dated 18/07/2007 rejecting the refund as time barred observing that the refund pertains to the period 01/04/2001 to 30th November, 2003 and the claim has been filed on 20/07/2006 after expiry of more than 2½ years. Being aggrieved, the appellant preferred appeal before learned Commissioner (Appeals), who was pleased to reject the appeal upholding the findings of the Assistant Commissioner.

3. Being aggrieved, the appellant is before this Tribunal. The learned counsel for the appellant states that the amount was *suo-moto* calculated and deposited pursuant to audit objection and the same was subsequently found to be deposited excess as per the calculation of Revenue and as such excess amount of Rs.2,59,410/- is in the nature of Revenue deposit and no limitation is attracted. For the sake of argument, he further states that even if it is taken to be as duty paid, still the claim arose after the appellant received the calculation sheet from the Department on 27/10/2005 and from such date, the claim filed within 12 months. He further urges that limitation cannot start to run before the right to make a claim crystallize.

4. The learned A.R. for Revenue relies on the impugned order.

5. Having considered the rival contentions, I am satisfied that the amount excess paid in December, 2003 is in the nature of Revenue deposit. Further, there is no limitation for refund of Revenue deposit. In this view of the matter I hold that the refund claim is not barred by limitation. Accordingly, I direct the Adjudicating Authority to grant the refund of the said amount of Rs. 2,59,410/- with interest as per Rules for the period after three months from the date of claim, being 20/07/2006. Thus, the appeal is allowed as indicated above.

(Order was dictated in the open Court)

प्रमाणित प्रति / Certified True Copy
23/04/17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

patel/-