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

Dated: 18/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70987/2016-EX[DB] dated 22/09/2016

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/2468/2007	STAR PAPER MILLS LTD. SAHARANPUR, UTTARPRADESH 247001.
		Name and Address of Respondent
2		-C.C.E. MEERUT I Excise Chowk, University Road, Mangal Pandey Nagar, Meerut - 250005.

Copy To

3 Advocate(s) / Consultant(s): SH V.L.KUMARAN,ADV
5, JANGPURA EXTENSION
LINK ROAD,NEW DELHI

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

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

Appeal No. : E/2468/2007-EX[DB]

Arising out of OIA No.115-CE/MRT-I/2007 dated 31.05.2007 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-I.

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities?
   : Yes

Star Paper Mills Ltd. ...APPELLANT(S)

VERSUS

C.C.E., Meerut I RESPONDENT (S)

APPEARANCE

Shri Atul Gupta, Advocate for the appellant
Shri Pawan Kumar Singh, Supdt., (A..R.) for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 22. 09. 2016

FINAL ORDER NO. 70907/16

Per Mr. Anil G. Shakkarwar :

The present appeal deals with the claim of refund of Rs. 14,10,371/- claimed by the appellant by filing four refund applications on 26.07.1993 and refiled on 25.06.2004, on finalization of provisional assessment by Original Authority. They were rejected claiming the same to be time barred and hit by unjust enrichment through Order-in-Original No.33/2006(R) dated 20.09.2006.

2. The brief facts of the case are that, for finalization of pricelists the assessments were kept pending during the period from January, 1993 to April, 1993. The pricelists were finalized on 17.04.1997. After the finalization of pricelists the assessment were finalized and 25 refund claims were allowed to the appellants and four refund claims for the period from January, 1993 to April, 1993 claiming the refund of Rs.14,10,371/- were rejected as stated above. The appellant preferred appeal before Commissioner (Appeals).

3. The learned Commissioner (Appeals) decided the appeal through Order-in-Appeal No. 115-CE/MRT-I/2007 dated 31.05.2007 wherein he has held that the assessments were finalized on 17.04.1997 and the appellant should have file refund claims within six months from that date and therefore he has held the refund claims to be time barred. He has further relied on the ration of judgment in the case of ***Mafatlal Industries Ltd Vs. Union of India*** reported at ***1997(89) ELT 247(SC)*** and held that duty paid under protest falls under Section 11B whereas duty paid under provisional assessment falls under Rule 9B and if an independent claim is made after adjustment on final

assessment under Rule 9B(5), then such claim would attract Section 11B and therefore bar of unjust enrichment would apply and therefore held that in the instant case time bar and unjust enrichment was applicable and therefore rejected the appeal. Aggrieved by the said Order-in-Appeal dated 31.05.2007, the appellant is before this Tribunal.

4. The grounds of appeal are as follows :-

"a) The date of finalization of price and of provisional assessment is 17.04.1997, which is prior to the date of amendment of proviso to Rule 9B-(5) of Central Excise Rules, 1944 which provides that in respect of provisional assessment bar of unjust enrichment would apply;

b) The refund claimed if arose on account of finalization of provisional assessment prior to 25.06.1999 then the amount is liable to be refunded to the assessee without insisting upon filing formal refund claim; and

c) In their letter dated 09.03.1998 written to the department they had submitted that their sale was cum-duty price and that they had undisputedly passed on the discount to the customers during the period from December, 1990 to April, 1993 and also submitted in their said letter that as they had not collected the cash discount amount from the customer, they had also not collected the corresponding Excise Duty amount from their customers. Further they have claimed that under Section 11BB of Central Excise Act, 1944 they are entitled *for interest on the refund due from the date Section 11BB of the said Act was enacted i.e. 25.05.1995."*

5. During the hearing on 15.06.2016, Revenue was requested to submit report on implementation of the order dated 17.04.1997 i.e. finalization of price list. A report in this regard was submitted by Revenue through letter dated 11.07.2016 issued by Assistant Commissioner, Saharanpur Division. The learned Assistant Commissioner, Saharanpur Division has submitted that the said four refund claims were initially filed by the claimant on 26.07.1993 and they were refiled on 25.06.2004. Further he has submitted that the concerned Jurisdictional Range Superintendent vide his report dated 27.01.2005 while submitting verification report has recommended sanction of refund of Rs. 14,10,371/- on the ground that said four refund claims were substantial to already sanctioned by 25 refund claims and the assessment of cash discount attained the finality, after the finalization of provisional assessment and after the dismissal of department's appeal by Hon'ble Supreme court vide his order dated 01.04.2003 and in the said verification report Superintendent had mentioned that the duty element involved in the cash discount during the above period have been checked. The said report further states that the provisional assessment was finalized on 17.04.1997 and the refund arising out of such finalization of provisional assessment were allowed in 25 refund claims and four refund claims involving the refund of Rs.14,10,371/-, also were related to the above finalization of provisional assessment but were denied on the ground of unjust enrichment and time bar clause.

6. The learned counsel reiterated grounds of appeal and he has relied on Supreme Court's rulings in the case of ***Mil India Ltd. Vs. Commissioner of C.C.E., Noida*** reported at ***2007(210) E.L.T. 188 (S.C.)*** and another Supreme Court's rulings in the case of ***Collector of Central Excise, Indore Vs. Hindustan Lever Ltd.*** reported at ***2000 (120) E.L.T. 3 (S.C.)***. He has further relied on rulings by Hon'ble Supreme Court in the case of ***C.C.E., Chennai Vs. T.V.S. Suzuki Ltd.*** reported at ***2003 (156) E.L.T. 161 (S.C.)*** and case laws in the case of ***C.C.E., Mumbai Vs. Allied Photographic India Ltd.*** reported at ***2004 (166) E.L.T. 3 (S. C.)***. He urged that as submitted by Revenue, the above stated refund claims were due on finalization of provisional assessment on 17.04.1997, they should have been allowed to them without their filing any refund claim of the same. He has further submitted that application of unjust enrichment to finalization of provisional assessment was not on the statute during the period for which their refund claims became due.

7. Learned A.R. has supported the Order-in-Appeal.

8. We have taken into consideration the rival contentions. The appellant had submitted in the grounds of appeal that the cash discount was not collected from their customers and cash discount was not part of the assessable value and therefore, it was not part of cum-duty price and therefore Excise Duty was not collected on that component and as a result Excise Duty was not collected from their customers and duty incidence was not passed on. We find that under said Rule 9B the concerned Assistant Commissioner should have allowed refund of Rs. 14,10,371/- while passing the finalization order

on 17.04.1997, since said four refund claims filed on 26.07.1993 were pending before him on 17.04.1997. We further find that as per report submitted by Revenue the refund claims were filed on 26.07.1993 i.e. much before the finalization of provisional assessment and within six months from the date of paying duty for the month of January, 1993 to April, 1993. We further find that proviso to Sub rule 5 of Rule 9B of Central Excise Rules, 1944 came into operation w.e.f. 25.06.1999 and as held in various case laws relied upon by the appellant during the relevant period Section 11B for unjust enrichment was not applicable for refund arising out of provisional assessment. We, therefore, hold that the appellant is entitled for refund of Rs. 14,10,371/- on the basis of refund claim filed on 26.07.1993. We direct the Original Authority to pay the appellant's refund of above stated amount within sixty days from the date on which a copy of this order is submitted to the office of the Original Authority. The Original Authority shall also take into consideration the interest to be paid on the said amount from the date on which provision for paying interest on delayed refund came into operation on the statute of Central Excise Act, 1944. In the above terms, the appeal is allowed.

(Pronounced and dictated in the open Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Patel/-