

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: 27/12/2017

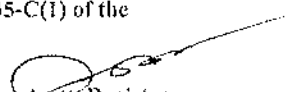
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71963/2017-SM[BR] dated 20/11/2017

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/2171/2011	JAYPEE CEMENT PRODUCTS (UNIT- JAIPRAKASH ASSOCIATES LTD.) SADVA KHURD, TEHSIL BARA, REWA HIGHWAY, DISTT. ALLAHABAD. Name and Address of Respondent
2		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

Copy To

3 Advocate(s) / Consultant(s):

Atul Gupta (Advocate), ALD
3/1A/3 OPP AUTO SALES, Above
the Office Of Blue Dart/DHL
Courier, COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

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, Opp ICICI Bank of Defence Colony 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)

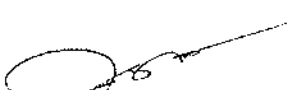
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

12 The ICAI 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 Second Folder Copy 17 ☒ Guard File


Asstt. Registrar

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

APPEAL No. E/2171/2011-EX[SM]

(Arising out of Order-in-Original/Appeal No. 67/CE/ALLD/2011 dated 07/06/2011 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad)

M/s Jaypee Cement Products
(Unit-Jaiprakash Associates Ltd.)

Appellant

Vs.

Commissioner of Central Excise, Allahabad

Respondent

Appearance:

Shri Atul Gupta (Advocate)

for Appellant

Shri Sandeep Kumar Singh (Dy. Commr.) AR

for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)



Date of Hearing : 20/11/2017

Date of Decision : 20/11/2017

FINAL ORDER NO. 71263/2017

Per: Anil Choudhary



The issue in this appeal is whether the refund arising to the appellant on finalization of provisional assessment for the period October, 2009, have been rightly rejected on the ground of unjust enrichment.

2. The brief facts are that the appellant is engaged in manufacture of Asbestos Cement Corrugated Sheets. They had applied for provisional assessment by their letter dated 22/09/2009, for further period in view of earlier permission

granted up to September, 2009. The Assistant Commissioner vide his permission letter dated 31/08/2009 issued on 03/09/2009 directed the appellant that the provisional value of clearances is fixed at Rs.10,600/- per MT for payment of duty provisionally for the period up to 19/01/2010.

3. Subsequently, post clearances the appellant vide their refund letter dated 10th June, 2010 applied for refund of Rs.13,07,981/- along with documents in support, namely extract of RG-1 for the month of October, 2009, ER-1, personal Ledger account, Order-in-Original No.08-Dem/2010 dated 30/03/2010, reconciliation report dated 31/10/2009, Xerox copy of invoices dated 31/10/2009. In the Order-in-Original dated 28/07/2010, the Deputy Commissioner observed that on finalization of the assessment vide order dated 30/03/2010 it has been held that appellant during the month of October had paid Central Excise duty to the tune of Rs.60,05,021/- though in terms of finalization of assessment, they were required to pay Rs.46,97,040/- for the said period. Thus, the appellant have paid Rs.13,07,981/- in excess for which the refund claim have been filed. The refund claim is otherwise found in order, but the same was rejected on the ground of unjust enrichment, observing that the appellant have charged and collected from their buyers Rs.60,05,021/- which fact is evident from the invoices raised.

4. Being aggrieved the appellant preferred appeal before Learned Commissioner (Appeals) who was also pleased to



reject the appeal upholding the order of rejection of refund on the ground of unjust enrichment.

5. Being aggrieved the appellant is before this Tribunal. The Learned Counsel states that there is an error of fact in the observations of the Deputy Commissioner followed by the Learned Commissioner (Appeals) in observing that the appellant have collected the amount of duty on the goods for October, 2009 amounting to Rs.60,05,021/-. The Learned Counsel points out from the permission letter of the Assistant Commissioner dated 31/08/2009 wherein it has been observed that assessable value of the sale through depots varies from Rs.5,149/- per MT to Rs.10,660/- per MT, during the period January, 2009 to June, 2009 and on the basis of such Data appellant was directed to pay the duty treating assessable value Rs.10,600/- per MT instead of paying duty on the transaction value at the time of clearance. Thus, the excess duty paid is the difference arising due to payment of duty treating the assessable value at Rs.10,660/- per MT instead of paying duty on the transaction value at the time of clearance. The excess amount has been wholly paid out of pocket by the appellant and there is no case of having collected the amount refundable or any part of it from their buyers. The Learned Counsel also demonstrates from some sample invoices and also from the chart prepared for clearances during the month of October, 2009, that they have collected less duty as is evident from the invoices, or from the



tally of invoices as per the chart prepared and presented in the course of hearing before this Tribunal. The Learned Counsel accordingly, prays for allowing the appeal with appropriate relief /directions.

6. The Learned A.R. relies on the impugned order.

7. Having considered the rival contentions, I am satisfied that the appellant have collected lesser amount of duty and or/ nothing more than what is stated in their invoices or the excise duty indicated on the invoices. Accordingly, I find that the findings of the Court below are prima facie wrong on facts. Accordingly, I find that there is no case made out by the Revenue of unjust enrichment. Under such facts and circumstances, I allow this appeal by way of remand with the direction to the Assistant Commissioner/Deputy Commissioner to allow the refund subject to verification, if the appellant have collected any amount more than what is stated in their invoices. Such excess amount only will be liable to be rejected if the assessee fails to satisfy on the issue of unjust enrichment. I further direct, to complete the exercise within a period of 2 months from the date of receipt of a copy of this order and grant the refund arising, if any, with interest as per law.

(Dictated & Pronounced in Court)

Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

25/01/18
38, Vardhman, Gurgaon-211001
39, M. G. MARK, ALLAHABAD-211001

Lks

