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: 05/12/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71850-71851/2017-EX[DB] dated 02/11/2017

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/2558/2010	KESHAV RESIN COATS PVT. LTD., 7TH K.M. DEHRADUN ROAD, SAHARANPUR (U.P.)
2	E/2559/2010	LAKSHMI ABRASIVES PVT. LTD., 7TH K.M. DEHRADUN RAOD, SAHARANPUR (U.P.)
		Name and Address of Respondent
3		-C.C.E. MEERUT I Excise Chowk,Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.
4		-C.C.E. MEERUT I Excise Chowk,Opposite Choudhary Charan Singh University Mangal Panday Nagar, Meerut - 250005.

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Aalok Arora, Advocate
82-MISSION COMPOUND,
SAHARANPUR,
UTTAR PRADESH
247001

6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

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

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad,-500082

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

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

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

APPEAL Nos.E/2558-2559/2010-EX[DB]

(Arising out of Order-in-Appeal No.07-CE/MRT-I/2010-11 dated 19/04/2010 and Order-in-Appeal No.06-CE/MRT-I/2010-11 dated 16/04/2010 both orders passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

M/s Keshav Resin Coats Pvt. Ltd., (in Appeal No.E/2558/2010)

M/s Lakshmi Abrasives Pvt. Ltd., (in Appeal No.E/2559/2010)

Appellants

Vs.

Commissioner of Central Excise, Meerut-I **Respondent**

Appearance:

Shri Aalok Arora, Advocate for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 02/11/17
Date of Decision : 02/11/17

FINAL ORDER NOs. 71850-71851/2017

Per: Anil Choudhary

The issue involved in these appeals filed by the appellant-manufacturers is whether the refund claim made by them is hit by the doctrine of unjust-enrichment.

2. Both the appeals arise from the separate impugned orders but as the issue is common, they are taken up together for disposal. For the sake of convenience, we mention the facts from the appeal of M/s Keshav Resin Coats Pvt. Ltd., are as under:-

3. The appellant are unregistered unit manufacturing coated abrasive falling under Chapter Heading No.6805 of the first schedule to the Central Excise Tariff Act, 1985, filed a refund claim for Rs.2,35,389/- on 23.01.2009 on the facts and grounds that they are manufacturer of excisable goods namely; coated abrasives and are availing exemption under Notification No.8/2003-CE dated 01.03.2003 as amended. During the financial years 2006-07 and 2007-08, they manufactured branded goods for M/s Brindwell Norton Ltd., Bangalore and cleared the same without payment of Central Excise duty. They were under impression that the exemption Notification No.8/2003-CE will be available on branded goods also. After getting the legal opinion, they paid central excise duty along with interest of Rs.8,38,287/- for the financial year 2006-07 and Central Excise duty along with interest of Rs.8,31,930/- for the financial year 2007-08. They further came to know that the value of the goods had to be treated as cum-duty price as no amount of duty was either shown in the invoices or realized from the customers. Hence, the refund of excess payment of duty and proportionate interest amounting to Rs.1,17,679/- for the financial year 2006-07 and Rs.1,17,710/- for the financial year 2007-08 was claimed by the appellants. The adjudicating authority vide the impugned order sanctioned the refund claim for Rs.2,09,891/- in the light of the apex court decision in the case of CCE, Delhi Vs Maruti Udyog Ltd. reported at 2002 (121) ELT 3 (SC) and

reject the refund of the interest amounting to Rs.25,498/- in as much the provisions related to the refund of interest came into force with effect from 10.05.2008 while the interest was paid by the appellant on 28.01.2008."

3. Being aggrieved, Revenue preferred appeal before the learned Commissioner (Appeals) on the ground that in view of the ruling of Hon'ble Supreme Court in the case of M/s Amrit Agro Industries Ltd. Vs CCE, Ghaziabad reported at 2007 (210) ELT 183 (SC) wherein it have been held that unless it is shown by a manufacturer that price of goods includes excise duty payable by him, no question of exclusion of duty element from the price will arise for determination of value under Section 4 (4) (d) (ii) of the Central Excise Act, 1944-one cannot go by general implication that wholesale price would always mean cum-duty price, particularly when assessee cleared the goods during relevant years on the basis of exemption Notification No. 08/2003 dated 01.03.03. In the instant case, the unit has not built-in the element of excise duty in the value charged and while accepting the same they paid duty on their own volition. Now they cannot say that the transaction value charged by them was cum-duty price. Hence, they would not be entitled to any refund on account of cum-duty price benefit. The learned Commissioner (Appeals) observed that appellants have not included the element of Central Excise duty in the price shown on the purchase

orders, as at that time, they proceeded with the view that the brand goods were also eligible for SSI exemption. Thus, the duty paid subsequently as per their own volition was duty paid the first time. It was further observed that the appellant failed to prove that the price charged by them were inclusive of Central Excise duty. Accordingly, the appeal by Revenue was allowed and the Order-in-Original for granting refund was rejected. However, the refund of interest on the present amount of duty excess paid was upheld.

4. Being aggrieved, the appellants are before this Tribunal. The learned Counsel in course of argument has taken us through the copy of invoice raised for clearance of branded goods by the appellant wherein after the basic price sales tax have been added. The learned counsel further states that in view of the ruling of the Hon'ble Supreme Court in the case of CCE Vs Maruti Udyog Ltd. (supra) unless the Central Excise duty or tax is separately shown in the invoice, it has to be considered as cum-duty price. Accordingly, appellant claimed the refund of the excess duty paid under the facts and circumstances. It is further evident from the facts on record that no further amount having been collected after raising of invoices and duty have been paid subsequently, doctrine of unjust-enrichment is not applicable. Accordingly, he prayed for allowing the appeal, with consequential relief.

5. Having considered the rival contentions, we find that the appellants herein being a SSI Unit, and not registered with the Central Excise Department, and cannot have charged Central Excise duty from their buyers. Further, from the facts on record and from the copy of invoice produced by way of sample, it is clear that no Central Excise duty have been charged from the buyers of goods. Thus, whatever amount the appellant collected have to be treated as cum-duty price. Under such facts and circumstances, we find that the adjudicating authority in the Order-in-Original has rightly allowed the refund of excess duty paid along with interest under the rules. Accordingly, we find that the order of the learned Commissioner (Appeals) is not tenable and the same is set aside.

6. Thus, the appeals are allowed. We further hold that the appellants are entitled for the component of interest which they have deposited along with duty, which represents interest, the same is allowed.

(Dictated in Court)

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

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

sbp

प्रमाणित प्रति/Certified True Copy
05/01/18

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण/C.E.S.T.A.T.
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001