Customs, Excise & Service Tax Appellate Tribunal
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017
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Sr. No	Case No	Impugned Order Detail's	Date of Impugned Order	Passed By	Appellant	Respondent
1	E/53509/2014-DB	OIA-JNK-EXCUS-000-APP-1072to1075-13-14	18/03/2014	Commissioner of Central Excise-JAMMU & KASHMIR	Bbf Industries Unit Iii	C.C.E. & S.T.-Jammu & Kashmir
2	E/53510/2014-DB	OIA-JNK-EXCUS-000-APP-1072to1075-13-14	18/03/2014	Commissioner of Central Excise-JAMMU & KASHMIR	Bbf Industries Unit Ii	C.C.E. & S.T.-Jammu & Kashmir

Represented by:
For Appellant (s) : Ms. Nivriti Raniwala, Advocate
For Respondent (s): Shri Bhasha Ram, AR

CORAM :
Mr. Ashok Jindal, Hon'ble Member (Judicial)
Mr. Anil G. Shakkarwar, Hon’ble Member (Technical)

Date of Hearing/Decision: 30.08.2018

ORDER No.A/63092-93/2018

Per : Mr. Ashok Jindal

The appellants are in appeals against the impugned orders.

2. The facts of the case are that, the appellants were engaged in the manufacture of Mosquito Repellant Coils under Chapter Sub-Heading No. 38089191 of the 1st Schedule to the Central Excise Tariff Act, 1985. As the appellants were located in the State of Jammu & Kashmir, they were availing benefit of exemption Notification No. 56/2002-CE dated 14.11.2002. The appellant were clearing their goods to their customers inclusive of outward freight charges by them. After exhausting their Cenvat credit account they paid duty through PLA inclusive of freight charges. To re-credit the same and re-credit was allowed to the appellants for the period November, 2012 & December, 2012. Thereafter,
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the show cause notices were issued by invoking extended period of limitation to deny the self credit of duty paid on freight portion form the assessable value as the same was not payable by the appellants. Therefore, excess refund claims by the appellants are recoverable. The matter was adjudicated, demand on account of erroneous refund was confirmed and the said order was challenged before the ld. Commissioner (Appeals) but hold that extended period is not invokable therefore, demand for the relevant period was dropped. Against the said order, the appellants are in appeals.

3. Ld. Counsel for the appellants submits that initially they filed the refund claims and the same were sanctioned to them as outward freight forms a part transaction value and therefore, they have correctly paid the duty and refund claims were rightly sanctioned. In that circumstance, without challenging the said refund claim in appeal, show cause notice cannot be issued under Section 11A of the Act as held by Hon'ble High Court of Gauhati in the case of *CCE, Shillong vs. Jellalpore Tea Estate – 2011 (268) ELT 14 (Gau).* In that circumstances, demand of refund claim sanctioned to them cannot be open for challenge.

4. On the other hand, ld. AR submits that the appellant has deliberately paid duty on the transportation charges which form a part of assessable value, to avail inadmissible refund, in that circumstances, extended period of limitation is invokable.

5. Heard the parties, considered the submissions. After hearing the contentions of both sides, we find that the issue emerges before us is

that, as refund claims were sanctioned to the appellants, and without challenging those assessment orders of refund claims sanctioning thereof, can be challenged by way of issuance of show cause notice under Section 11A of the Act or not. The said issue is exempted by the Hon'ble High Court of Gauhati in the case of Jellalpur Tea Estate (supra), wherein the Hon'ble High Court observed as under:-

> "**13.** That apart, the Assistant Commissioner of Central Excise, Silchar had passed a final order in favour of the assessee on 29-4-2002 and admittedly, this order was revisable under Section 35-E of the Act. For reasons best known to the Commissioner of Central Excise, Shillong no action was taken to have the order of the Assistant Commissioner revised or set aside. Having failed to avail of the statutory remedy available under the Act, the Revenue sought to circumvent the law (as it were) by taking recourse to Section 11A of the Act. In our opinion, this was clearly impermissible inasmuch as what is required to be done in a manner prescribed by law, ought to be done in that manner only or not at all."

Therefore, we hold that provisions of Section 11A of the Act are not applicable to the facts of this case. Accordingly, demands against the appellants are not sustainable.

6. In view of the above analysis, we allow the appeals filed by the appellants.

(Dictated & pronounced in the Court)

(Anil G. Shakkarwar)	**(Ashok Jindal)**
Member (Technical)	Member (Judicial)

G.Y.