

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

**DIVISION BENCH
COURT NO. I**

APPEAL NO. E/1048/2008-Ex[DB]

[Arising out of Order-in-Appeal No. 398/CE/APPL/LDH/2007 dt. 01.01.2008 passed by the Commissioner of C.Ex. (Appeals), Chandigarh]

Hindustan Insecticides Ltd. : Appellant(s)

VS

CCE, Chandigarh-I : Respondent(s)

Appearance:

Present for the Appellant(s): Mr. Himanshu Bansal, Advocate
Present for the Respondent(s): Mr. A.K. Saini, A.R.

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Hon'ble Mr. Bijay Kumar, Member (Technical)

Date of hearing/decision: 05.12.2018

FINAL ORDER NO. 63593/2018

Per : Ashok Jindal

None appeared on behalf of the appellant nor any request for adjournment has been received. On perusal of records, we find that the matter has been heard on several occasions and all the occasions, none appeared on behalf of the appellant. Considering the appeal pertains to year 2008, therefore the same is taken up for disposal.

2. The facts of the case are that the appellant filed the refund claim of Rs. 65,59,026/- on 29.03.2007. The said refund was claimed on the ground that they have paid the excess duty in respect of clearances of 'Alphacyermetherin 5% WP' by them to M/s RITES Ltd in May, 2004. Due to variation in the price at which the initial clearances

were made and the subsequently settled the price, the refund claim was filed. The appellant did not opt for provisional assessment but filed the refund claim with a delay. The refund claim was rejected by the adjudicating authority on the ground of limitation as the has been filed beyond the time limit prescribed under Section 11B of the Central Excise Act, 1944. Against the said order, the appellant is before us.

3. We have gone through the records placed before us. The facts of the case are in dispute that clearances made by the appellant in May, 2004 and the refund claimed has been filed on 29.05.2007. In terms of Section 11B of the Act, the relevant date is a date when the duty has been paid and the refund claim is required to be filed within one year from the relevant date. Admittedly, the refund claim has been filed beyond the period of one year; therefore, Ld. Commissioner (Appeals) has rightly rejected the refund claim as time barred.

4. In view of the above, we do not find any infirmity in the impugned order; accordingly, the same is upheld.

5. In result, the appeal filed by the appellant is dismissed.

(Dictated and pronounced in the open court)

(Bijay Kumar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

RAS'