

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

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

**COURT NO. I
APPEAL NO. E/50511/2015**

[Arising out of Order-in-Original No. OIO-JNK-CEX-000-017-2014 dated 20.10.2014 passed by the Commissioner of Central Excise (Appeals), Jammu & Kashmir]

Date of hearing/decision: 06.12.2018

C.C.E Jammu & Kashmir : **Appellant(s)**

VS

M/s Jindal Photo Ltd : **Respondent(s)**

Appearance:

Present for the Appellant(s): Shri Bhasha Ram (AR)

Present for the Respondent(s): Shri Reena Khaira (Advocate)

CORAM:

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

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

FINAL ORDER NO.

63635 /2018

Per : Ashok Jindal

The respondent is in appeal against the impugned order wherein amounts sought to be recovered from the appellant under Section 11A of the Act, on account of excess refund given to the respondent.

2. The facts of the case are that the respondent is located in the State of Jammu & Kashmir and manufacture photographic Color paper, X-ray Films. The respondent is clearing the said goods from their factory to depot, thereafter, allowance of certain discounts were clearing the said goods from their depot to the

dealer. As the respondent was availing the benefit of Notification No. 56/2002-CE dated 14.11.2002, the respondent filed refund claim of duty paid through PLA at the time of clearance from their factory, the refund claims were sanctioned. Later on, it was found that the goods which have been cleared from the depot, the respondent had given certain discounts to the dealers and these discounts cannot be the part of assessable value, therefore, excess refund given to the respondent sought to be recovered by issuance of the show cause notice under Section 11A of the Act. The excess refund allowed by way of impugned order. Against the said order, the Revenue is before us.

3. The Ld. Counsel appearing on behalf of the respondent submits that as refund claim sanctioned to them has not been challenged, in these circumstances, in the light of the decision of Commissioner of **C.EX., Shillong Vs. Jellalpure Tea Estate – 2011 (268) ELT 14 (Gau.)**, the show cause notice is not sustainable.

4. Heard the parties, considered submissions.

5. We find that it is admitted fact that refund claim have been sanctioned to the respondent and the order of sanctioning the said refund claim has not been challenged before the appellate authority, therefore, in the light of the decision of the Hon' ble High Court of Guahati in the case of Commissioner of **C.EX., Shillong Vs. Jellalpure Tea Estate** (Supra) wherein this Tribunal 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."*

We hold that the show cause notice cannot be issued to the respondent under Section 11A of the Act. Therefore, no demand can be recovered on the respondent.

In view of above, we do not find any infirmity in the impugned order, the same are upheld. In result, the appeal filed by the Revenue is dismissed.

(Order dictated and pronounced in the open court)

Bijay Kumar
Member (Technical)

Ashok Jindal
Member (Judicial)

Kailash