IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/160 & 161/2009 and E/599 & 657/2010

(Arising out of Order-in-Appeal No.140 & 141/2008 dated 17.12.2008 and Order-in-Appeal No. 342/2010 dated 20.8.2010 and Order-in-Appeal No.296/2010 dated 23.7.2010 all passed by the Commissioner of Central Excise (Appeals), Madurai)

Commissioner of Central Excise, Tirunelveli — Appellant

Vs.

M/s. Church's Auxiliary for Social Action — Respondent

Appearance

Shri K. Veerabhadra Reddy, JC (AR) for the Appellant
Shri M.S. Krishnakumar, Advocate for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **23.08.2017**

Final Order Nos. 41865 - 41868/2017

Per Bench

The above appeals are filed by the department being aggrieved by the orders passed by the Commissioner (Appeals) who set aside the order rejecting refund and sanctioned the refund claims filed by the respondents.

2. Brief facts of the case are that the respondent is a non-governmental organization engaged in rehabilitation and house construction work in the Tsunami affected areas. In terms of Notification No. 32/2005-CE dated 17.8.2005, the respondents were eligible for refund of cement and steel used in the construction of house. Accordingly, they filed refund claims for the different quarters. In the said notification, according to department, there was a condition that the refund claim should be filed within 60 days and that the Assistant / Deputy Commissioner has powers to condone the delay upto 120 days. That the refund claims were filed beyond this period and therefore are time-barred. Show cause notices were issued proposing to reject the refund claims on the ground of time-bar. After adjudication, the refund sanctioning authority rejected part of the refunds holding that they are time-barred. Against this, the respondents filed appeals before Commissioner (Appeals) and vide order impugned herein, the Commissioner (Appeals) sanctioned the refund. Being aggrieved, the department is now before the Tribunal.

3. At the time of hearing, the ld. counsel Shri M.S Krishna Kumar appearing for the respondent submitted that in the respondent's own case, vide Final Order Nos. 170 to 174/2009 dated 11.2.2009, the Tribunal in identical facts in respect of the same notification had observed that time-limit prescribed

in the notification is a procedural condition and violation to fulfill the same cannot affect the entitlement of the target community to receive the relief. It was also held that the refund claims filed within time-limit prescribed in section 11B are to be treated to be filed within time. He submitted that all the refund claims except the claim for the quarter 1.7.2005 to 30.9.2005 for an amount of Rs.61,437/- is filed within the period of one year as prescribed under section 11B of the Central Excise Act.

4. The learned AR Shri K. Veerabhadra Reddy reiterated the grounds of appeal.

5. In the impugned order, Commissioner (Appeals) has relied upon judgments of the Apex Court in the case of Giridhari Lal & Son Vs. Balbir Nath Mathur & Ors. – AIR 1986 SC 1499 to observe that in order to avoid patent injustice or invalidation of law, strict adhering to the time limit for filing refund claims stipulated in a notification would only adversely affect the public interest and thereby defeat the very purpose of issuing Notification No. 32/2005. We do agree with this view taken by the Commissioner (Appeals). However, since the refund claim for the quarter 1.7.2005 to 30.9.2005 is beyond the time limit of one year prescribed under section 11B. We are of the opinion that the respondent are not eligible for the claim of refund for this quarter to the tune of Rs.61,437/-.

Following the proposition laid down by the Tribunal in the final order in the respondent's own case, cited supra, we are of the view that the impugned order calls for no interference except for the refund claim of the quarter 1.7.2005 to 30.9.2005 (Rs.61,437/-). Thus appeal No. E/160/2009 is partly allowed. Appeal No.E/161/2009 and E/599 & 657/2010 filed by the department is dismissed.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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