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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/5580/2004 - EX[DB]

Date 16/12/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SAROJ METAL WORKS PVT. LTD.
H.O-602, CHIRANJIVE TOWER, 43, NEHRU PLACE, N DELHI.
110019

M/S SAROJ METAL WORKS PVT. LTD. Appellant
Vs
C.C.E. BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 924/2008-**EX[DB]** dated 08-12-08 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E. BHOPAL
48, ADMINISTRATIVE AREA, AREA HILLS, HOSHANGABAD ROAD, BHOPAL (M.P.)
2. Adv. / Consult
MR ~~DR YUVRAJ SHEKHER KUMAR,ADV~~
"~~AISHWARYA"-4029, GREENFIELDS COLONY, FARIDABAD~~
SH. DR. Y. KUMAR, ADV.,
"AISHWARYA"
20, SECTOR-46,
FARIDABAD
3 S.D.R
~~4 I.C.D.R~~.
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagarava Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

EXCISE APPEAL NO. 5580 OF 2004

[Arising out Order-in-Appeal No. 600-601-CE/BPL/2004 dated 17.8.2004 passed by the Commissioner of Central Excise (Appeals-II), Bhopal]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	N.
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	No.

M/s. Saroj Metal Works, Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Shri Er. Y., Advocate, for the appellant;
Shri Virender Chaudhary, Departmental Representative, for the Revenue,

Coram:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
Hon'ble Mr. P.K. Das, Member (Judicial)

Date of hearing/decision: 08.12 2008

FINAL ORDER NO. 924/08-Ex **dated** ________

Per P.K. Das:

The appellants are engaged in the manufacture of LPG cylinders and cleared to various Oil companies on higher provisional prices. The oil companies by a letter dated 31.10.2000 finalized and reduced the price. The appellants filed refund claim on 2.2.2001 of Rs. 16,24,205/- for the period July, 1999 to 31st October, 2000. The adjudicating authority sanctioned refund of Rs. 8,55,895/- for the period of one year prior to date of filing of the refund claim. He rejected refund claim for Rs. 7,68,310/- as time barred. Both the parties filed appeal before the Commissioner (Appeals). By the impugned order, the Commissioner (Appeals) disposed of both the appeals.

2. Heard both sides and perused the record.

3. We find that Revenue filed appeal before the Commissioner (Appeals) on the ground of unjust enrichment and on limitation. The appellant also filed appeal on the ground that refund is not barred by limitation as they paid duty on provisional price, which is treated as provisional ~~amount~~ assessment. The main contention of the learned Advocate of the appellant is that the Commissioner (Appeals) has observed, the assessee's appeal is allowed to certain extent which is not specified ~~categorily~~ properly. He further, submits that the Revenue's appeal is also partially allowed,

which is also not clarified in the said order. Learned D.R. submits that on perusal of the findings of the Commissioner (Appeals), it is clear that unjust enrichment is not applicable but limitation is applicable. On perusal of the impugned order we find that the Commissioner (Appeals) observed regarding unjust enrichment as under:-

> "As regards the aspect of unjust enrichment raised in the instant revenue appeal, I find that the Apex Court in case of Mafatlal Ind. Vs. UOI at para 95 has held that section 11A and 11B are not applicable in case of refunds as a result of finalization of assessment and hence, treating the aforesaid assessments as provisional under rule 9B, I observe that the question of unjust enrichment under section 11B does not arise."

4. We noted that the Commissioner (Appeals) allowed the refund from 15.10.2001 when the appellant submitted all the documents. Learned Advocate submits that the appellants filed refund claim on 2.2.2001 which was not considered by the Commissioner (Appeals). We find that there is factual dispute in the present case. Accordingly, we set aside the impugned order and remand the matter to the Commissioner (Appeals) to decide afresh after considering the submissions of the appellants. Appeal is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

Dated 8th December, 2008
RK