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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/,5948 & 6249/2004 - EX[DB] Date 04/02/2009

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

To :
M/S IRCON INTERNATIONAL LTD.
18-B HASTING ROAD NYAY MARG ASHOK NAGAR
ALLAHABAD U.P
211001

M/S IRCON INTERNATIONAL LTD. Appellant
Vs
C.C.E.BHOPAL M.P Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 93-94/2009- **EX[DB]** dated 28-1-09 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 M.P
   48 ADMINISTRATIVE AREA,HOSHANGABAD ROAD M.P
2. Adv. / Consult SH. KANTI MOHAN RUSTOGI & SH. PRAYAG GOYAL, S-22, LOWER GROUND FLOOR GREATER KAILASH-I, N. DELHI-48
3 S.D.R
~~4 J.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), Thyagaraya 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-15
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 5948 & 6249 OF 2004

[Arising out of Orders-in-Appeal No. 309-CE/BPL/2004 dated 14.9.2004 & 315-CE/BPL/2004 dated 29.9.2004 passed by the Commissioner, (Appeals) Central Excise, 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?	NO
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Departmental authorities?	Yes

M/s. IRCON International Ltd., Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Shri Kanti Mohan Rustogi & Sh. Prayag Goyal, Advocates for the appellant;
Shri Amit Jain, 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: 28th January, 2009

FINAL ORDER NO. 93-94/09 **dated** 28

Per M. VEERAIYAN:

These 2 appeals by the same appellant involve common issue and, therefore, are being dealt with by a common order.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

(a) The appellant procured cement from the manufacturer M/s. Jaypee Bella. The appellant was procuring the said goods for use in a project funded by World Bank and sought exemption in terms of Notification No. 108/95 dated 28.8.1995. At the time of clearance of goods by the manufacturer the necessary certificates were not produced by the appellant and, therefore, the manufacturer paid the duty without availing the benefit of notification No. 108/95.

(b) The appellant subsequently obtained the certificate and, in the capacity as buyer of excisable goods, claimed refunds of duty whose burden was passed on to them.

(c) On appeal, the Commissioner (Appeals) held that refund claims cannot be rejected on the ground that the certificate was produced later as the delay in production of certificate was considered by him as a procedural issue. Accordingly, he allowed the refund claims on merits with following observations:-

"So long as refund claim is within 1 year, and as per the provisions of section 11B of C. Excise Act, 1944 the above conditions are not necessary. In view of the above, the refund claim is allowed subject to the time limitation under section 11B of Central Excise Act, 1944."

(d) The appellant has filed this appeal objecting to the conditions imposed by the Commissioner (Appeals) that the refund claim should be subject to the time limitation prescribed under 11B and, therefore, filed common appeal before us.

4. Learned Advocate for the appellant submits that the Commissioner (Appeals) have rightly held that the delay in production of the certificate is a procedural one and that they were eligible to procure the goods without payment of duty. In the light of this finding the payment of duty by the manufacturer at the time of clearance of the goods is with out the authority of law and the collection of the said duty by the department is, therefore, without authority of law. In cases of collection of duty without the authority of law the provisions of Section 11B cannot be applied. In support of this submission, he relies on the decision of the Bombay High Court in writ petition No. 754/82 in the case of M/s. Sang Fasteners (Pvt.) Ltd. vs. UOI & Ors., reported in 1988 (17) ECR 315 (Bombay). He also relies on the decision of the Hon'ble Supreme Court in the case Union of India & Others vs. ITC Ltd., reported in 1993 Supp (4) Supreme Court Cases 326.

5. Learned D.R. submits that the Commissioner (Appeals) has allowed the refund claims on merits. He has merely directed the original

authority to consider the claim applying limitation as prescribed under the Central Excise Act. There is no justification to challenge such a decision. It is settled law that the refund claim can be entertained by the Central Excise authorities only as per time limit provided in the statute. He relies on the decision of the Hon'ble Supreme Court in the case of Porcelain Electrical Mfg. Co. vs. Collector of Central Excise, New Delhi, reported in 1998 (98) ELT 583 (SC).

6. We have carefully considered the submissions from both sides. At the time of clearance of the goods by the manufacturer, admittedly the certificate enabling them to procure duty free goods for the project funded by the World Bank, was not produced. Under these circumstances payment of duty by the manufacturer and collection of duty by the department cannot be held to be unauthorized or without the authority of law. The decisions relied upon by the learned advocate for the appellant are not applicable to the facts of the present case. The decision in the case of Porcelain Electrical Mfg. Co. (supra) relied upon by the learned D.R., in our opinion, squarely applies to the present case. The relevant port of the said judgment is reproduced below:-

"4. In our opinion, the controversy stands concluded by the decision of this Court in Collector of Central Exicse, Chandigarh v. M/s. Doaba Co-operative Sugar Mills Ltd., Jalandhar, 1988 (37) E.L.T. 478 (S.C.) = 1988 Supp. SCC 683. The relevant observations are extracted below:

"But in making claims for refund before the departmental authority, an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. The Authorities functioning under the Act are bound by the provisions of the Act."

5. Since the appellant had filed an application under Rule 11 read with Rule 173J and sought its remedy under the Statute it was bound by the limitation provided under the Act and the Rules. It was not open to the appellant to claim that even though the period of limitation was provided under the Statute for refund the application filed by it should be processed and considered under the general law of limitation."

7. In the light of the above, we do not find any merit in the appeals. The appeals are, therefore, rejected.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

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