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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/5959/2004 - EX[DB] Date 30/03/2009

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

To :
M/S HILLTOP RUBBER P LTD
RAILWAY MAL GODOWN ROAD, BARAUT, DISTT:
BAGHPAT (U.P.)
M/S HILLTOP RUBBER P LTD Appellant

Vs

C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 238/2009- **EX[DB]** dated 17-3-09

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. MEERUT I
EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

3 C.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
15 Office Copy
16 Guard file
17. SR. P.S.TO PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 5959 of 2004

(Arising out of Order-in-Appeal No. 537-CE/MRT-I/2004 dated 27.08.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I).

DATE OF HEARING : 17.03.2009
DATE OF DECISION : 17.03.2009

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

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

M/s Hilltop Rubbers (P) Ltd. .... **Appellants**
(Rep. by Sh. Atul Gupta, Co. Secy.)

VERSUS

CCE, Meerut .... **Respondent**
(Rep by Sh. B.S. Suhag, DR)

CORAM : HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 238/09-EX

PER JUSTICE R.M.S. KHANDEPARKAR :

This appeal arises from the Order-in-Appeal No. 537-CE/MRT-I/2004 dated 27.08.2004 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-I. The only point which is sought to be canvassed in the appeal is that, the show cause notice dated 20th March, 1998, which was issued for an amount of Rs. 18,489/-, was issued beyond a period of limitation prescribed under Section 11-A of the Central Excise Act, 1944, as the impugned notice related to the period from July, 1997 to September, 1997.

2. The learned advocate appearing for the appellants submitted that, undisputedly the impugned show cause notice related to the period from July, 1997 to September, 1997 and it was issued on 20th March, 1998. He further submitted that, the Department was fully aware of the classification claimed by the appellants as also the benefit claimed by them under the relevant Notification at the time when the required declarations were filed by the appellants and, therefore, no notice could have been issued under Section 11-A, after the expiry of the period of six months from the relevant date.

3. Learned DR, on the other hand, submitted that, the notice was issued within six months from the relevant date as contemplated under Section 11-A of the said Act and this aspect has been duly considered by the authorities below; hence, there is no substance in the contention sought to be raised on behalf of the appellants.

4. Undisputedly, the period for which the show cause notice was issued under Section 11-A relates to July, 1997 to September, 1997 and the impugned notice was issued on 20th March, 1998. Being so, the period prior to 20th September, 1997 would obviously fall beyond the period of six months prior to the issuance of the show cause notice. However, as rightly pointed out by the learned DR, Section 11-A(3)(ii)(a) clearly provides that, the relevant date for issuance of the show cause notice under the provisions of the said Act, is within the period of six months from the date of filing of the periodical return when the provision of law requires the party to file such return. It is not in dispute that, in the case in hand, the appellants were required to file periodical returns in terms of the statutory provision and, in fact, the appellants had filed such returns being RT-12 under Rule 173-Q of the Central Excise Rules. It is also a matter of record that the impugned notice dated 20th March, 1998 was issued within the period of six months from such date of the filing of RT-12 by the appellants. This fact has been clearly considered by the Deputy Commissioner in his order dated 10th March, 2000.

5. The contention on behalf of the appellants, however, is that, the demand for short levy could not have been made after the expiry of period of six months. This contention is devoid of substance as Section 11-A empowers the authorities to issue show cause notice not only for necessary action for recovery of the short levy, but also for imposition of penalty for failure on the part of the assessee to pay the correct duty. Further, the expression "relevant date", which is to be found in Section 11-A(1) and which is the date for commencement

of the proceedings for recovery of short levy of duty, has been clearly described in Section 11-A(3)(ii)(a) wherein it is stated that : "relevant date" means – in the case of excisable goods on which duty of excise has been levied or paid or has been short-levied or short paid – where under the rules made under this Act a periodical return, showing particulars of the duty paid on the excisable goods removed during the period to which the said return relates, is to be filed by a manufacturer or a producer or a licensee of a warehouse, as the case may be, the date on which such return is so filed. In the case in hand, as already recorded, there is no dispute that the appellants were required to file periodical return and, accordingly, had, in fact, filed RT-12 return and the notice was issued within six months from the date of filing of such return. Being so, the Department was justified in issuing the show cause notice under Section 11-A for recovery of the short levy and for imposition of penalty in accordance with the provisions of law. We find no fault on the part of the authorities nor we find the impugned notice being beyond the period of limitation. The contention that the demand cannot be beyond the period of six months also cannot be accepted, once we find the statutory provision clearly empowers the authorities to issue such notice within six months from the relevant date.

6. Learned advocate for the appellants has drawn our attention to the order of the Apex Court in the case of **Commissioner of Central Excise, Ahmedabad-I vs M. Square Chemicals,** 2008 (231) ELT 194 (SC), while contending that the Department cannot invoke the powers under Section 11-A beyond a period of six months.

7. At the outset, it is to be noted that the order of the Apex Court in **M. Square Chemicals'** case was passed in the facts of the peculiar case. The order is not relating to the expression "relevant date" which is to be found under Section 11-A. Being so, the order is not relevant to the matter in hand.

8. As no other ground is canvassed in the appeal, the appeal fails and is hereby dismissed.

(Dictated and pronounced in the open Court on the day of 17th March, 2009)

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

RAKESH KUMAR
( )
MEMBER (TECHNICAL)

Golay