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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**

Date 14/09/2009

Appeal No. E/5315/2004 - EX[DB]

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

To :
C.C.E. BHOPAL
48, ADMINISTRATIVE AREA, AREA HILLS,
HOSHANGABAD ROAD, BHOPAL (M.P.)
C.C.E. BHOPAL

Appellant
Vs
Respondent

M/S VIDHYA CYLINDERS PVT. LTD.

I am directed to transmit herewith a certified copy of **Final order No. 656 2009 EX[DB]** Dated 01-9-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

**Copy to :**
1. Respondent
M/S VIDHYA CYLINDERS PVT. LTD.
PLOT NO 112, SEC A, INDL. AREA, MANDIDEEP, DISTT.- RAISEN (M.P.)
2. Adv. / Consult
MR.RAMAKANT GAUR
199 LAWYERS CHAMBER, PATIALA HOUSE COURT, NEW DELHI
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file
18. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

COURT-I

Date of hearing/decision: 01.09.2009

**Excise Appeal No. 5315 of 2004**
[Arising out of Order-in-Appeal No.523-CE/BPL/2004 dated 12.7.2004 passed by the Commissioner (Appeals-II), Customs & Central Excise, Bhopal]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, 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? | Yes |
| 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? | Yes |

CCE, Bhopal — Appellant

Vs.

M/s Vidhya Cylinders (P) Ltd., — Respondent

Appearance:

Appeared for the Appellant – Shri Surender Shah, DR

Appeared for the Respondent – None

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

Final Oral Order No. 656/09-Ex

Per : M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) dated 12.07.2004.

2. None appears for the respondents in spite of notice. Heard the learned DR.

3. The respondents were supplying LPG Cylinder to Government owned oil companies namely, HPCL, IOCL and BPCL and the purchase orders contained Price Variation Clause. The respondent filed refund claim of Rs. 19,24,782/- for the period from 01.04.1997 to 31.03.2001. The original authority by his order dated 29-03-04, taking into account that the respondents applied for provisional assessment vide their letter dated 17.04.98 held that the claim for the period from 01.04.97 to 16.02.98 was barred by limitation. He also rejected the claim in respect of supplies made to IOCL for the period 01.01.2001 to 31.03.2001 on the ground that the assessment in respect of supplies made to IOC was yet to be finalized.

4. On appeal by the party, Commissioner (Appeals) held that even for the period 01.04.1997 to 16.02.1998, the respondents were eligible for the refund as the purchase orders contained price variation clauses. As regards the claim for the period from 01.01.2001 to 31.03.2001, taking note of the fact that subsequently the assessment has been finalized on 29.03.2004., he allowed the refund claim for the said period.

5. Learned DR submits that the order of the Commissioner (Appeals) in allowing the refund prior to 17.04.1998 is incorrect. The Price Variation Clauses in the purchase orders placed by the buyers with the respondent cannot be treated as provisional assessment under Rule 9B of the Central Excise Rules, 1944. He also submits that the party has claimed that there was a clerical mistake and the

claim made by them should be treated as Rs. 21,05,378/- as against Rs. 19,24,782/- Further, the party has received a sum of Rs. 5,68,672/- from oil companies towards excess excise duty paid. Under these circumstances, order of the Commissioner (Appeals) to refund a further amount of Rs. 1,02,148/- is incorrect.

6.1 We have carefully considered the submissions of the learned DR and perused the records. Admittedly, the party filed the refund claim only on 06-03-2003 for a sum of Rs.19,24,782/- relating to the period from 01.04.1997 to 31.03.2001. In as much as, the application for provisional assessment was filed only on 17.04.1998, the question of treating assessment during the period from 01.04.1997 to 16.04.1998 as provisional assessment does not arise. The procedure prescribed for the purpose of provisional assessment in terms of Rule 9B has not been complied with for this period. Therefore, the order of the Commissioner (Appeals) in allowing the refund for this period is erroneous. In view of the above, the order of the Commissioner in so far as it relates to allowing the refund for the period from 01.04.1997 to 16.04.1998 is set aside and order of the original authority in this regard is restored.

6.2 As regards the order of the Commissioner (Appeals) allowing the refund in respect of supplies made to IOCL relating to the period from 01.01.2001 to 31.03.2001, we do not find any valid reason to interfere with the same. We find that the original authority has rejected the refund claim merely on the ground that the provisional assessment was not finalized and, therefore, the claim was pre-mature. The fact remains that the appellant had asked for final assessment and the action for finalization was pending only with the department. The appellant also submitted the refund claim relating to supplies made to IOCL during the above period on 06.03.2003. It is also not disputed the assessment has since been finalized. Under these circumstances, the order of the Commissioner (Appeals) allowing the refund in respect of the supplies made to IOCL does not call for any interference from us, especially in the light of the fact that the assessment has since been finalized.

7. The appeal is disposed of in the above terms.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/