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

Appeal No. C/701 /2005 - CU[DB] Date 10/11/2008

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

To :
J K CEMENT WORKS
KAILASH NAGAR, NIMBAHERA, DISTT:
- CHITTORGARH (RAJASTHAN)
J K CEMENT WORKS Appellant

Vs

THE COMMISSIONER II, CENTRAL EXCISE &
CUSTOMS, JAI Respondent

I am directed to transmit herewith a certified copy of Final order No.C/592/08-CUS DATED 07.11.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
THE COMMISSIONER II, CENTRAL EXCISE & CUSTOMS, JAI
NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR
2. Adv. / Consult
MR.AMIT TIWARI, ADV., BINDU BHAWANI,
49, SHASTRI MARG. UDAIPUR, 313001, RAJASTHAN
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
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

C/Appeal No.701/2005 -DB

(Arising out of order in appeal No.224(RM)CE/JPR.II/2005 dated 26.4.2005 passed by the Commissioner of Central Excise (Appeals), Jaipur)

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 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

M/s J.K. Cement Works — Appellant
(Rep. by Shri Bipin Garg, Advocate)

Vs

CC, Jaipur — Respondent
(Rep. by Shri Fateh Singh, DR)

Coram: Hon'ble Mr. M. Veeraiyan, Member(Technical
Hon'ble Mr.P.K. Das, Member(Judicial

Date of Hearing: 30.9.08
Date of Decision: 7.11.08

Final Order No. C/592/08 /2008

Per P.K. Das:

The Appellant filed this appeal against the rejection of refund claim of Rs.10,22,523/- as time barred and hit by bar of unjust enrichment under Section 11-B of Central Excise Act, 1944.

2. The relevant facts of the case, in brief, are that in January, 1997, the appellants imported a consignment of capital goods for the purpose of setting up a cement plant. The appellant kept the consignment in the Central Warehousing Corporation. The appellant company was facing severe financial crisis and unable to clear the goods and to deposit the customs duty. In the meantime, their lease of the factory premises was cancelled and the matter was moved before the Hon'ble Rajasthan High Court whereby the appellant was directed to install the plant before 31st December, 2001 and order of cancellation of lease and recovery of dues was kept in abeyance till that time. In view of that, the appellant deposited the customs duty. By letter dated 1st August, 2001, they requested the Assistant Commissioner of Customs, Udaipur for waiver of interest under Section 61 of Customs Act, 1962 and also informed that they were depositing the interest under protest for the purpose of release of goods. CBEC rejected their application for waiver of payment of interest on 9.10.2001. Subsequently, the appellant found that they had paid excess amount of interest to the tune of Rs.10,22,523/- and applied for refund claim of the said amount. The Adjudicating Authority rejected the refund claim as time barred and hit by principle of unjust enrichment. The Commissioner (Appeals) upheld the adjudication order.

3. The learned Advocate on behalf of the appellants submits that the appellants deposited the interest under protest vide letter dated 1.8.2001. He further submits that the payment was made under protest and therefore, refund claim cannot be treated as time barred. He also submits that in any event, the appellant paid the interest in excess amount by mistake which was refundable to them and limitation under Section 27 of the Customs Act is not applicable. He further submits that principle of unjust enrichment is not applicable to capital goods and relied upon various decisions of the Tribunal.

4. The learned DR reiterates the findings of the Commissioner (Appeals). He submits that the appellants applied for waiver of payment of interest and paid the amount under protest. He further submits that CBEC disposed of by rejecting the application for waiver of pre-deposit on 9.10.2001 and the limitation would run from that date. He further submits that the appellant filed the refund claim on 26.12.2003 and it is hopelessly barred by limitation.

5. After hearing both the sides and on perusal of the record, it is revealed from the letter dated 1.8.2001 addressed to the Assistant Commissioner of Central Excise and Customs, Udaipur that the appellant requested for waiver of interest under Section 61 and deposited the amount of interest under protest without prejudice to the prayer of waiver of interest pending in the petition filed by them before the Board under the provisions of section 61(2) of the Customs Act, 1962. Thus, it is clearly evident that the appellant deposited the interest under protest, in view of the application for waiver of interest pending before the Board. The Board rejected the application on 9.10.2001. So, the payment of interest was finalized by rejection of the

application by the Board letter on 9.10.2001. We find that the protest of the appellant was vacated when the application was rejected by the Board on 9.10.2001 and limitation for refund claim would start from the said date. In the case of ONGC Vs CCE Kanpur reported in 2003 (156) ELT 794 (Tri.-Del) the Tribunal held that refund claim could be allowed only if filed within six months of vacation or dismissal of manufacturer's claim on unjust enrichment. On a query from the Bench, the learned Advocate submits that the appellants paid the excess amount of interest by way of erroneous calculation of rate of interest. So, it is not a case of mere calculation mistake.

6. In view of that, we find that the refund was rightly rejected as time barred. So, we do not find any reason to discuss on the issue of the refund being hit by unjust enrichment. The impugned order is upheld. The Appeal is rejected.

(Order Pronounced on 7.11.2008 )

(M. Veeraiyan)
Member(Technical)

(P.K. Das)
Member(Judicial)

MPS*