

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

Appeal No. E/3778/2005-SM[BR]

Date 11/01/2008

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

To :  
M/S PRECISE LABORATORIES LTD  
A-13/2, INDUSTRIAL AREA, SOUTH SIDE OF  
G.T.ROAD, GHAZIABAD

M/S PRECISE LABORATORIES LTD

Appellant

C.C.E GHAZIABAD

Vs  
Respondent

I am directed to transmit herewith a certified copy of Final order No.48/2008-SM[BR] dated 30.10.2007  
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

  
Assistant Registrar  
(SM Appeal Branch)

**Copy to :**

1. Respondent

C.C.E GHAZIABAD

C.G.O COMPLEX-II, KAMLA NEHRU NAGAR,  
GHAZIABAD

2. Adv. / Consult

MR.RAJESH CHHIBBER

FA/9, NEW KAVI NAGAR, GHAZIABAD

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

  
Assistant Registrar  
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL**  
West Block No. 2, R.K. Puram, New Delhi – 110 066.  
Principal Bench, New Delhi

**COURT NO. III**

**Excise Appeal No. 3778 of 2005 – SM (BR)**

[Arising out of the Order-in-Appeal No. 111/CE/GZB/2005 dated 31/08/2005 passed by The Commissioner (Appeals), Central Excise, Ghaziabad.]

For Approval and signature :

**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? :
3. Whether their Lordships wish to see the fair copy of the order? :
4. Whether order is to be circulated to the Department Authorities? :

M/s Precise Laboratories Ltd.

Appellant

Versus

CCE, Ghaziabad

Respondent

**Appearance**

Shri Rajesh Chhiber, Advocate – for the appellant.

Shri S. Gautam, Authorized Representative (DR) – for the Respondent.

CORAM : Hon'ble Shri P.K. Das, Member (Judicial)

**DATE OF HEARING : 30/10/2007.**

Final Order No. 48 | 08 <sup>SM (BA)</sup> Dated : 30/10/07

**Per. P.K. Das :-**

The relevant facts of the case in brief are that the appellants are engaged in the manufacture of Perfumed Oil and Lal Dant Manjan classified under Chapter 33 of the schedule to the Central Excise Tariff Act, 1985. On 12 May 1995, the Central Excise officers visited the appellant's factory and conducted stock verification. It has been alleged that there was shortage of waste and scrap in comparison with the stock register. The appellant debited an amount of Rs. 8,00,000.00 and Rs. 1,84,046.00 on 12/05/95 and 17/05/95 respectively. By letter dated 15/05/95 and 18/05/95, the appellant informed the Assistant Commissioner of Central Excise that the payment made by them were under protest. Show cause notice was issued. The Assistant Commissioner of Central Excise confirmed the demand of duty. The appellant preferred an appeal before the Commissioner

(Appeals). By Order-in-Appeal dated 18/03/97, the Commissioner (Appeals) modified the adjudication order. In pursuance of the order of the Commissioner (Appeals), the appellant filed a refund claim of Rs. 8,74,046.00 vide letter dated 07/08/97. The adjudicating authority rejected the refund claim on the ground that the refund claim is not filed within time and therefore it is barred by limitation. The Commissioner (Appeals) upheld the adjudication order.

2. The learned advocate on behalf of the appellant submits that appellant made the payment under protest as evident from the letter dated 15/05/95 and 18/05/95. He further submits that it is well settled position by series of the decisions of the Tribunal that the deposit made during the investigation would be treated as pre-deposit and therefore refund cannot held as time barred. He relied upon the decision of the Tribunal as under :-

- (i) Stgeel Products Ltd. Vs. Commissioner of Central Excise, Kolkata – II as reported in 2003 (158) E.L.T. 476 (Tri. – Kolkata)

- (ii) I.T.C. Ltd. Vs. CCE, Chennai as reported in 2002 (52) R.L.T. 88 (CEGAT – Che.)
- (iii) Commissioner of Central Excise, Nagpur vs. Abhideep Chemicals Pvt. Ltd. As reported in 2002 (143) E.L.T. 70 (Tri. – Mumbai).

3. The learned DR on behalf of the Revenue reiterates the finding of the Commissioner (Appeals). He submits that the appellant did not follow the procedure under Rule 233B of the erstwhile Central Excise Rules, 1944 and therefore, duty was not deposited “under protest” and the refund is barred by limitation.

4. After hearing both the sides and on perusal of the records, I find that there is no dispute that the appellant deposited the amount during investigation and by letter dated 15/05/95 and 18/05/95 informed the Assistant Commissioner of Central Excise that the deposit was made “under protest”. Show Cause notice dated 10/11/95 was issued, which was confirmed by the Assistant Commissioner of Central Excise. By Order-in-Appeal dated 18/03/97 the Commissioner (Appeals) modified the Adjudication Order. Consequently,

the appellant is entitled to get return back of the amount of Rs. 8,74,160.00 deposited during investigation. It is seen that the Tribunal in the case of Steel Products Ltd. (Supra) held that in such situation provision of Section 11B of the Central Excise Act, 1944 limitation of six months would not apply to the said deposit. The relevant provision of the decision of the Tribunal is reproduced below :-

“4. I find that the Larger Bench of the Tribunal in the case of *Jayant Glass Industries Pvt. Ltd. Vs. CCE, Kolkata – 2003 (155) E.L.T. 188 (Tribunal – LB)* has directed the Revenue to refund the amount deposited by the appellant during investigation along with payment of interest from the date of expiry of three months period from the date of application for refund till date of payment. Chennai Bench of the Tribunal in the case of *CCE, Tiruchirapally Vs. Ravi Sankar Industries Ltd. – 2002 (150) E.L.T. 1317 (Tribunal – Chennai)* has observed that the deposit made by the assessee during the course of investigations cannot be treated to be duty in as much as the same was deposited before the issuance of the show cause notice or for adjudication or

demand notice. Therefore the question of time-bar will not apply. I also note the Gujarat High Court's decision in the case of *Parle International Ltd. Vs. UOI – 2001 (127) E.L.T. 329 (Gujarat)* laying down that the amount deposited by petitioner during adjudication proceedings is to be regarded as 'deposit' and not 'duty'. Doctrine of unjust enrichment or the provisions of Rule 233B of Central Excise Rules are not applicable to such deposit. By observing so the High Court has directed the Revenue to refund the amount so deposited along with the interest."

5. In view of the above, in the present case, the appellant deposited the amount during investigation "under protest" and therefore, limitation under Section 11B of Central Excise Act, 1944 would not apply. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

(Dictated and pronounced in open court)

**(P.K. Das)**  
**Member (Judicial)**

PK