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

Date 23/01/2008

Appeal No. E/4024/2006-SM[BR]

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

To :
C.C.E.INDORE
P. B. NO. 10, MANIK BAGH PALACE, INDORE.

C.C.E.INDORE — Appellant

Vs

M/S S.K.INDUSTRIES LTD — Respondent

I am directed to transmit herewith a certified copy of Final order No. 124/2008-SM[BR] dated 10.12.2007 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S S.K.INDUSTRIES LTD
   MAHAPURA INDUSTRIAL AREA, GWALIOR(MP)
2. Adv. / Consult SHRI, PRAVEEN AGARWAL ADV.
   414 A, SURESH NAGAR R.K. PURI, GWALIOR-474011[M.P]
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 Publictions (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 AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. III

Excise Appeal No. 4024 of 2006 -SM (BR)

[Arising out of Final order No. IND-1/326/2006 dated 11.10.2006 passed by the Commissioner (Appeals-I) Customs & Central Excise, Indore]

Date of Hearing/ Decision: 10.12.2007

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 should 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 Departmental authorities? :

No

CCE, Indore — Appellant

[Rep. by Mr. S.L. Meena, Authorised Representative (DR) for the Appellant]

VS.

M/s S.K. Industries Ltd., — Respondent

[None]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final ORDER No. 124/08-SM(BR)

Per P.K. Das:

Heard the learned DR on behalf of the appellant. None appeared on behalf of the respondent in spite of issue of notice.

2. The respondent filed a refund claim of Rs. 6 lakhs deposited by them during the investigation vide PLA entry No. 70 dated 16.09.2007 under protest. The case was decided in favour of the respondent by order-in-

original dated 30.06.2004 passed by the Commissioner of Central Excise, Indore. The adjudicating authority rejected the refund claim on the ground of barred by limitation and unjust enrichment. The Commissioner (Appeals) set-aside the order of the adjudicating authority and allowed the refund claim alongwith interest.

3. Learned DR on behalf of the Revenue submits that the respondent failed to produce any evidence that the incidence of duty was not passed to any other person. He reiterates the grounds of appeal. He further submits that the duty was deposited on 16.09.97 and the claim was filed after the passing of the order-in-original dated 30.06.2004 and procedure under Rule 233B of the erstwhile Central Excise Rules 1944 was not followed and therefore claim is barred by limitation.

4. After hearing the learned DR and on perusal of the records, it is seen from the order of Commissioner (Appeals) that the payment made under protest as mentioned in PLA and there~~after~~fore refund claim is not barred by limitation. Regarding unjust enrichment, it is stated in the grounds of appeal that the deposit amount was got verified from the range office. The respondent could not substantiate any evidence that the amount was not passed on to the customers. It is also contended by the learned DR that the balance sheet produced by the respondent was not signed either by the Chartered Accountant or Director of the company and cannot be held as a valid document. At this stage, the learned DR submits that the adjudicating authority examined the unsigned balance sheet as stated in the grounds of appeal. I find that the Commissioner (Appeals) had examined the balance sheet and the Range Superintendent's report in respect of unjust enrichment. The relevant portion of the order of the Commissioner (Appeals) is reproduced below:-

"I have examined the records including the Range Superintendent's report dated 24.3.2005 and 13.01.2006 and the balance sheet submitted through their counsel's letter dated 02.12.05) and I observe that the appellant has debited, under protest, an amount of Rs. 6 lakhs vide PLA entry No. 70 dated 16.9.97 and this has been duly verified /certified by the Range authorities. Further, in the letter dated 24.3.2005 (which was in response to a direction issued to the Range Officer by the Assistant Commissioner after a personal hearing was held on 11.03.2005 in this case), the Superintendent has clearly mentioned that the PLA has been traced and a copy sent with the letter and that original and duplicate copy of the said PLA is available in the Range Office. I also find that the duplicate copy of the PLA for the period July/August 1997 and original copy of PLA for September 1997 are availed in the file, indicating payment of Rs. 6,00,000/- on 16.9.97. The balance sheet also shows this amount of Rs.6,00,000/- under the head 'Advances' indicating that this has not been passed on to the buyer. The Tribunal in the case of Plas Pack Industries and other cases, cited by the appellant (supra) has also clearly held that bar of unjust enrichment is not attracted when duty is paid subsequent to clearance of goods. In view of the discussions above, I am of the considered opinion that the adjudicating authority's order rejecting the claim on the ground of unjust enrichment and non submission of documents is not legally sustainable".

5. The main contention of the Revenue is that the balance sheet examined by the Commissioner (Appeals) was not signed either by the Chartered Accountant or Director of the company and cannot be held as a valid document. I find that this is required to be examined by the Commissioner (Appeals). Accordingly, the mater is remanded back to the Commissioner (Appeals) to examine the balance sheet whether it is signed either by the Chartered Accountant or director of the company and to pass order accordingly. The appeal is allowed by way of remand.

(Order dictated and pronounced in the open Court)

(P.K. Das)
Member (Judicial)

[Pant]