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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 28/07/2008

Appeal No. E/5787 – 5788 /2004 –SM[BR]

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

To :
INDRA PROCESSORS [2]M/S SHIVOM PRINTS
AJANALA ROAD, AMRITSAR AJNALA ROAD. NEAR KHURANA DHARAM KANDA
AMRITSAR P.B.]

INDRA PROCESSORS

Appellant
Vs
Respondent

C.C.E. JALLANDHAR(HQ. AT CHANDIGARH)

I am directed to transmit herewith a certified copy of **Final order No 1087 -1088 /2008 –SM[BR]**. dated 14.7.2008 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. JALLANDHAR(HQ. AT CHANDIGARH)
   C.R.BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH.
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

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

E/Appeal Nos.5787-5788/04-SM

(Arising out of order in appeal No.388-389/CE/Jal/04 dated 30.8.04 and No.367-368/cE/Appeal/Jal/04 dated 26.8.04 passed by the Commissioner of Central Excise (Appeals), Jalandhar)

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?

M/s Indra Processors — Appellant
(Rep. by Shri Hemant Bajaj, Advocate)

Vs

CCE, Jalandhar — Respondent
(Rep. by Shri S. Gautam, DR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 14.7.08

Final Order No. 1087-1088 /2008-SM(BR)

Per P.K. Das:

Common issue is involved in these appeals and therefore, both the appeals are taken up together for disposal.

2. By Final Order No.1696- 1699/06-SM(BR) dated 23.11.2006, the Tribunal dismissed appeals as the dispute regarding duty liability under the compounded levy scheme under Section 3-A of Central Excise Act, 1944, no proceedings can continue. The appellants herein challenged the order of the Tribunal before the Hon'ble Punjab & Haryana High Court. By order and judgment dated 7th December, 2007, the Hon'ble High Court set aside the order of the Tribunal in respect of appellants and the matter was sent back to the Tribunal for deciding the issue on merit, after taking into consideration of various pleas raised by the appellants including the ~~pela~~ plea that the incidence of duty has not been passed on to the consumers because their sale price continued to be the same which was prevailing before the grant of benefit of duty under Section 3A of the Act and also as to whether refund is time barred. In compliance of the order of the Hon'ble High Court, both the appeals are being taken up together for disposal.

3. The relevant facts of the case, in brief, are that the appellants are engaged in processing of man-made fabrics with the aid of power steam, and hot air stenter. The appellants paid duty under the compounded levy scheme under Section 3-A of the Central Excise Act, 1944. The duty was paid on the basis of size of the chamber. A doubt arose whereby the duty was also demanded on the galleries which were a pollution control equipment. The Hon'ble Supreme Court in the case of CCE, Jaipur Vs Sangam Processors (Bhilwara Ltd) reported in 2002 (146) ELT 254 (SC) held that duty is not payable on galleries. Accordingly, the appellants filed refund claim of duty paid on galleries.

4. Appeal No. E/5787/04 relates to refund of Rs. 4,50,888/- for the period June, 1999 to November, 1999 and ~~No.~~ 16th December,98 to 31st January, 1999 which was rejected on the ground of unjust enrichment. Appeal No. E/5788/04-SM relates to refund of Rs. 1,12,202/- for the period December 1999 and February 2000, rejected on the ground of unjust enrichment and time bar.

5. The learned Advocate on behalf of the appellants submits that on the same issue, in the appellants own case, in respect of unjust enrichment for the different periods, the Tribunal remanded the matter to the adjudicating authority for verification of the evidence. He submits that in de-novo adjudication, the adjudicating authority by order in original No. 14/DISC/2008 dated 31.3.2008 sanctioned the refund claim. He fairly submits that the present cases, may be remanded to the adjudicating authroty for verification of the records in respect of unjust enrichment.

6. Regarding time bar issue, he submits that the appellants filed refund claim on 26.6.2000 which was subsequently returned back by the authorities and various correspondences were took place. He further submits that ultimately they again filed the refund claim in the month of September, 2003 at the instance of Central Excise officers. He drew the attention of the Bench to the various correspondences which were placed before the Commissioner (Appeals).

7. The learned DR reiterates the finding of the Commissioner (Appeals). He submits that the Commissioner (Appeals) observed that the appellants failed to place on record any evidence that the department had asked to file the refund claim during the month of September, 2003.

8. After hearing both the sides and on perusal of the record, it is seen that the appellants filed the refund claim on 26th June, 2000 as evident from the following records:-

a) Refund claim application dated 26.6.2000 is indicating the receipt signatures by the officer on 26.6.2000.

b) By letter dated 21st July, 2000, the Superintendent of central excise returned the refund claim to the appellants as the Commissioner of Central Excise, Chandigarh vide order dated 31.5.99 has determined the capacity of duty to be payable. Hence there is no question of refund of duty.

c) By letter dated 18th November, 2000, the appellants informed to the Assistant Commissioner of Central excise that the order of the Commissioner has been stayed by the Tribunal. As such, the operation of the order of the Commissioner cannot take place and they are entitled to take the refund. They re-submitted refund application.

d) By letter dated 5.12.2000, the Superintendent of Central Excise again returned the refund claim on the ground that the order of the Tribunal was not enclosed with the appellants letter.

e) The appellants by letter dated 5th February, 2001, again resubmitted the refund claim to the authorities with copy of the order of the Tribunal.

f) By letter dated 14.2.2001, the Superintendent of Central Excise returned the refund claim as the same is incomplete.

g) The appellants vide letter dated 22.2.2001, resubmitted the refund claim to the authorities with a request to point out the defects in their application.

h) Further by letter dated 9.4.2001, the Superintendent of Central Excise returned the refund application as there is no change in the annual capacity determination for the relevant period.

i) By letter dated 16.4.2001, the appellants again resubmitted the refund application wherein the details of galleries were given.

j) Again the Superintendent of Central Excise by letter dated 4th May, 2001, returned the refund claim with the directions that the same may be filed after obtaining necessary orders from the commissioner.

k) After the above correspondences, the appellants resubmitted the refund claim in the month of September, 2003.

9. The learned Advocate submits that the appellants placed the above correspondences before the Commissioner (Appeals) which was not disputed. I find that the appellants placed this evidences to establish the refund claim was filed on 26th June, 2000 which was not accepted by the Commissioner (Appeals) on the ground that the appellants had not placed before the Adjudicating Authority. So, the finding of Commissioner (Appeals) that the appellants failed to produce the evidences that they have filed the refund claim in the month of September, 2003 at the instance of the Department, is contradictory. In any event, it is apparent from the face of record and the appellants filed the refund claim on 26.6.2000. So, the refund claim cannot be rejected on the ground of time bar.

10. Regarding unjust enrichment, I find that the Tribunal by final order dated 21.3.2007, in the appellants' own case for different periods, remanded the matter to the Adjudicating Authority for verification of the balance sheet. After examining the record, the Assistant Commissioner sanctioned the

refund claim. In the present case, the learned Advocate placed the certificate of the Chartered Accountant in respect of unjust enrichment, certifying the schedule of the balance sheet. I find that this issue is required to be verified by the adjudicating Authority.

11. In view of the above discussion, the refund claim in Appeal No. 5788/04 was rejected on the ground of time bar is set aside. However, both the appeals are remanded back to the Adjudicating authority for verification of the evidences in respect of unjust enrichment. Both the appeals are allowed by way of remand in the above terms.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*