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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

Appeal No. E/3414/2006 – SM [BR] Date 05/12/2008

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

To :
C.C.E.GHAZIABAD.

CGO COMPLEX II,KAMLA NEHRAU
NAGAR,GHAZIABAD.
C.C.E.GHAZIABAD. Appellant

Vs

M/S SHARDA FORGING & STAMPING P LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1585 / 2008 –SM[BR]** dated 15.10.2008

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 SHARDA FORGING & STAMPING P LTD

PLOT NO 4,SITE IV,INDL AREA 6,SAHIBABAD,GHAZIABAD.
2. Adv. / Consult SHRI RAJESH CHHIBBER ADV.
FA-2, KAVI NAGAR GHAZIBAD [U.P]

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-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.3414 of 2006-SM (BR)

[Arising out of Order-in-Appeal No.101-CE/GZB/2006 dated 24.07.2006 passed by the Commissioner of Central Excise (Appeals), Ghaziabad]

Date of Hearing/ Decision:15.10.08

For approval and signature:

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

1. Whether Press Reporters may be allowed to see 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?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	Y-N.

CCE, Ghaziabad ....Appellants

[Rep. by Shri Sansar Chand, DR]

Vs.

M/s. Sharda Forging & Stamping Pvt. Ltd. ...Respondent

[Rep. by Shri Rajesh Chhibber, Advocate]

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

Final Order No..1585/2008 SM (BR)/Dated:15.10.2008

<u>**Per P.K. Das**</u>:

The relevant facts of the case, in brief, are that the respondents were engaged in the manufacture of articles of Iron and Steel and had been claimed SSI exemption for payment of concessional rate of duty. It has been alleged that the respondents collected excess amount in the guise of duty and hit by Section 11 D of the Central Excise Act, 1944. The respondents deposited the said amount through Cenvat Account before issue of show cause notice. The respondents filed an application before the Settlement Commission, Customs & Central Excise, New Delhi to settle the dispute. It appears from the appeal of the Revenue that in terms of the Order dated 8.9.2003 of the Settlement Commission, the respondents deposited the duty in cash. The Settlement Commission observed that the respondents are free to approach the Commissioner requesting for re-credit of the amount already deposited in RG-23 A Part-II Account. In the present proceedings, the Adjudicating Authority allowed the re-credit of Rs.3,65,850/-, which they deposited from their Cenvat Account. Revenue filed appeal before the Commissioner (Appeals), which was rejected. Hence, the Revenue filed appeal before this Tribunal.

2. Ld. DR reiterates the Grounds of Appeal. He submits that the order of the Adjudicating Authority is a refund order. He relied upon the decision of the Hon'ble Delhi High Court in the case of Jumax Foam Pvt. Ltd. Vs. Union of India reported in 2003 (157) ELT 252 (Delhi).

3. Ld. Advocate reiterates the findings of the Commissioner (Appeals). He relied upon the decision of the Tribunal in the case of

Standard Surfactants Ltd. Vs. Commissioner of Central Excise, Bhopal reported in 2001 (132) ELT 79 (Tribunal-Delhi).

4. After hearing both the sides and on perusal of the records, it is seen that there is no dispute that the respondents paid the duty twice. The Settlement Commission directed the respondents to approach the Commissioner to re-credit the amount already debited in Cenvat Account. In the Grounds of Appeal filed by the Revenue, it is stated that in the case of M/s. Allied Photographics India Ltd. reported in 2004 (166) ELT (Supreme Court), it has been held that the duty paid by the party on his own account, has to be dealt in view of Section 11(B) of Central Excise Act, 1944. In the present case, I find that the respondents initially debited the amount from the Cenvat Account. Subsequently, they deposited the same amount in cash through TR-6 Challan in terms of the order of the Settlement Commission. It is contended by the Revenue that the respondents debited the duty in the Cenvat Account on 27.03.2001 and it is never claimed for a refund before expiry of one year, the claim is hit by limitation as time bar. I find that the respondents had not claimed the refund. They approached to the Asstt. Commissioner to re-credit the amount in pursuance of the order of the Settlement Commission. Therefore, it cannot be treated as claim of refund under Section 11 B of the Act. In other words, it is a case of adjustment of the amount of duty paid twice. The Tribunal in the case of Standard Surfactants Ltd. (supra)

held that duty paid twice over by appellant on inputs cleared by them under Rule 57F(1)(ii) of Central Excise Rules, 1944 first through their Modvat Account and again through their PLA, the appellant by making payment through PLA become entitled to take credit back in their Modvat credit account for the amounts paid through their PLA. It is not hit by limitation under Section 11B of the Act as it being merely an accountal adjustment. In view of the decision of the Tribunal in the case of Standard Surfactants Ltd. (supra), I find that it is a mere adjustment of the amount of duty by way of re-credit in the Cenvat Account. So, I do not find any reason to interfere the order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

Order dictated & pronounced in open court on 15.10.2008.

(P.K. Das)
Member (Judicial)

Ckp.