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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/967 /2007 – SM [BR] Date 18/03/2009

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

To :
M/S PNC CONSTRUCTION CO. LTD.
D-51, KAMLA NAGAR, AGRA-282005

M/S PNC CONSTRUCTION CO. LTD. Appellant
Vs
C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 220 / 2009 –SM[BR] dated 12.3.2009 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. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult
   MR.SURESH AGGARWAL
   1324, SECTOR-28, FARIDABAD
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, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO.I

Excise Appeal No. 967 of 2007-SM

[Arising out of order-in-appeal No. 164 to 167/CE/2006 dated 27.10.2006 passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow]

Date of Hearing/Decision : 06.02.2009

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice-President

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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s PNC Construction Co. Limited — Appellant
[Rep. by Mr. Vivek Agarwal, Advocate]

Versus

CCE, Lucknow — Respondent
[Rep. by Mr. R.K. Verma, DR]

CORAM: Hon'ble Ms. Jyoti Balasundaram, Vice-President

Final Order No. 220/09-SM (BR)

Per Jyoti Balasundaram:

The appellant herein was allotted a contract of work for rehabilitation of Bareilly to Badaun Road of 45 Km. ~~long~~ length of State Highway No. 33 under World Bank loan assistance and approved by the Government of India for implementation by UPPWD, Government of Uttar Pradesh. The benefit of Notification No. 108/95 dated 28.8.95 was claimed by the appellant who applied for certificate from the concerned authority as required under the notification; however, due to late receipt of certificate and due to time bound nature of the work they purchased the CRMB during the relevant period from IOC, Mathura on payment of duty instead of nil rate of duty in terms of Notification No. 108/95 dated 28.8.95. Subsequently, they received certificate and applied for refund. The claim for refund of Rs. 93,252/- (for the period 4.11.2003 to 24.11.2003) alongwith supporting documents was filed before the Central Excise Division, Bareilly on 08.11.2004; claim for refund of Rs. 71,254.80 for the period 01.12.2003 to 22.12.2003 was submitted to the Central Excise Division, Bareilly on 26.11.2004. Both claims were later submitted at the Central Excise Division, Aligarh on 29.03.2005; the claim for refund of Rs. 51,889.20 for the period 15.01.2004 to 22.01.2004 were submitted at Bareilly on 04.01.2005 and claim for refund of Rs. 25,944.60 for the period 17.02.2004 were filed in Central Excise Division, Bareilly and later on submitted at Central Excise Division, Aligarh on 19.03.2005. The claims were rejected by the adjudicating authority on the ground of limitation (the date of re-submission was taken into account for computing the period of limitation) and also for the reasons that the amount of refund in the claim filed before the Deputy Commissioner was different from the amount claimed before the Central Excise Division, Aligarh and also for the reason that the goods were purchased from Aonla Depot and not from IOC, Mathura which was the requirement of certificate and on the ground that there was no material on record to show that assessee has purchased the goods from IOC, Aonla Depot. The Commissioner (Appeals) noted the submission of the assessee regarding the discrepancy in the amounts of claim filed by the Central Excise Division, Bareilly and the Central Excise Division, Aligarh as well as the submission of the appellants that goods were purchased on payment of duty from the Aonla Depot and also certificate showing details of HSD supplied to them was also submitted to the Superintendent, Mathura. However, he upheld the finding of the adjudicating authority on time bar as well as for the other reasons contained in the adjudication order.

2. As regards the plea of the appellant that the claims for refund are not barred by limitation. I, see merit in their submission namely that the date of filing claim at Bareilly (the claims were submitted at Bareilly as the goods were purchased from the depot which is under the jurisdiction of the Central Excise Division, Bareilly) is relevant. Once the claims were filed within the statutory period of limitation before the Central Excise Division Bareilly and subsequently at Aligarh, the claims cannot be dismissed on time barred. I, therefore, hold that the claims are not barred by limitation. As regards the other objection raised to the claims, once the assessees have putforth their explanation for the discrepancy, and produced certificate showing purchase of the goods in question before the adjudicating authority, it was for the lower appellate authority to have considered the submissions as the assessees had no occasion to explain the discrepancy earlier for the reason that the show cause notice did not propose rejection of the claim on any ground other than the ground of time-bar. Therefore, while accepting the plea of the appellant that the claims for refund are not hit by bar of limitation, I remit the case to the adjudicating authority for fresh decision after considering the various contentions made by the appellants to explain the discrepancies as noted by the adjudicating authority in his order. He shall pass fresh order after extending reasonable opportunity to the assessee of being heard in their defence.

3. The appeal is thus allowed by way of remand.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]