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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 19/05/2009

Appeal No. E/2718/2006 – SM[BR]

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

To :
M/S PNC CONSTRUCTION CO. LTD.

D/51, KAMLA NAGAR, AGRA

283005

M/S PNC CONSTRUCTION CO. LTD. Appellant

Vs

CCE LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 387 / 2009 –SM[BR] dated 29.4.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   CCE LUCKNOW
   7/A ASHOK MARG, LUCKNOW
2. Adv. / Consult
   SHRI BIPIN GARG ADV.
   B-1/1289-A,VASANT KUNJ NEW DELHI

3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise, I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

E/2718/06-SM

[Arising out of Order-in-Appeal No.73/CE/2006 dt.29.6.06 passed by the Commissioner(Appeals), Lucknow)

For approval and signature:

Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

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. PNC Construction Co. Ltd. Appellant

Versus

CCE, Lucknow Respondent

Appearance
Shri Bipin Garg, Adv. For Appellant
Sh. R.K.Saini, Authorised Departmental Representative, DR for Respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 29.4.09
Final Order No. 387/09-SM (BR)

Per Rakesh Kumar:

The facts of the case leading to the present appeal are, in brief, as under:

The Appellant was allotted a work contract for rehabilitation of Bareilly to Badaun Road of 45 Km. long for State Highway No.33 of U.P. The contract was awarded under the World Bank Loan Assistance and approved by the Govt. of India for implementation by U.P. Public Works Department. The goods supplied for this project were exempt from duty under Notification No.108/95-CE dt.28.8.95 subject to certain conditions specified in the exemption notification - One of such conditions specified in the exemption notification was that Essentiality Certificate regarding the requirement of a particular quantity of certain goods required for the project, issued by the designated authority, is produced by the manufacturer to the jurisdictional Central Excise authority before clearance of the goods. In this case, the Appellant purchased Bitumen from Indian Oil Corpn. during period from 10.5.03 to 20.10.03 and at that time, the required certificate was not there. The goods were, therefore, cleared by IOC on payment of duty and incidence of duty was passed on to the Appellant. The required certificate was received only on 25.2.04 and on the basis of this certificate, the Appellant as buyer of the duty paid goods filed refund claimof Rs.5,42,521/- under Section 11B(1) of Central Excise Act on 29.3.05. The Asstt. Commissioner of Central Excise vide order-in-original dt.13.1.06 rejected the refund claim on the ground of time bar rejecting the Appellant's plea that the date of issue of exemption certificate should be treated at the 'relevant date' from counting the limitation period. Their appeal against the Asstt. Commissioner's order was dismissed by the Commissioner(Appeals) vide impugned order-in-appeal 73-CE/2006 dt.29.6.06. It is against this order of the Commissioner(Appeals) that the present appeal has been filed.

2. Heard both sides.

2.1 Shri Bipin Garg, Advocate, Ld. Counsel for the Appellant pleaded that even though at the time of clearance of the goods, the required certificate from the designated authority was not there, the same had been produced subsequently and therefore, in view of the Tribunal's judgments in the cases of CCE, Chennai vs Dynaspede Integrated Systems Ltd. reported in 2002(147)ELT.541; CC(Airport), Chennai vs Regional Executive Dir. Airport Authority of India reported in 2007(217)ELT.298 and Commissioner of Customs, Bangalore vs Integra Micro Systems(P) Ltd. reported in 2005(180)ELT.174, wherein in respect of the benefit of exemption under notification No.108/95 and other similar notifications, it was held that the production of certificate issued by the designated authority before clearance of the goods being procedural requirement, the exemption is not deniable on account of production of certificate subsequent to the clearance, the duty exemption under Notification No.108/95-CE cannot be denied in respect of these goods and the same, as such, is available in respect of the same, that since at the time of clearance of the goods by IOC, the same had been cleared on payment of duty and since the incidence of duty had been passed on to the Appellant who have borne the same, the Appellants are first eligible for refund of this duty, that since the Cause ~~course~~ of action for refund claim arose only when the exemption certificate was issued, it is the date of issue of exemption certificate which should be treated as the relevant date; and that if for calculating the limitation period for filing the refund application, the date of issue of exemption certificate is treated as a relevant date, the refund claim has been filed within time limit. In this regard, he cited the judgment of the Tribunal in the Appellant's own case order No.220/2009-SM(BR) dt.6.2.09.

2.2 Shri R.K.Saini, Ld. DR defending the impugned order pleaded that as per the provisions of explanation "B" to Section 11B, the 'relevant date' in case a person other than the manufacturer is the date of purchase of goods by such person; that in view of this, the date of issue of exemption certificate by the designated authority cannot be taken as the relevant date and that since the goods had been purchased by the Appellant during the period from 10.5.03 to 20.10.03 while the refund claim have been filed on 29.3.05, the same is time barred. He also pleaded that the judgment of the Tribunal's final order No.220/09-SM dt.6.2.09 cited by the Appellant is not relevant at all to the issue involved in this case.

3. I have carefully considered the submissions from both the sides and perused the records. The only point of dispute in this case is as to whether the refund claim filed by the Appellant is within time. According to the Appellant, it is the date of issue of exemption certificate on the basis of which the manufacturer of the goods became eligible for the duty exemption under notification No.108/95-CE may be treated as the relevant date from counting the limitation period. I find that this contention is totally unacceptable as as per the definition of 'relevant date' the Explanation B to Section 11B, in case of person other than the manufacturer, the date of purchase of the goods by such person would be the 'relevant date'. Since in this case, the date of purchase is during the period from 10.5.03 to 20.10.03 and the refund claim had been filed on 29.3.05, the refund claim is time barred. The issue involved in the Tribunal's judgment in the Appellant's own case cited by the Appellant is totally different. In view of this, I find no merit in this appeal and no infirmity in the impugned order. The appeal is dismissed.

Operative part of the order pronounced in the open Court.

(Rakesh Kumar)
Member Technical

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