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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/1085/2007 – SM[BR] Date 20/05/2009

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

To :
C.C.E. INDORE
MANIK BAGH PALACE, POST BOX NO. 10, INDORE
452001 (M.P.)

C.C.E. INDORE Appellant
Vs
M/S MAGNUM IRON & STEEL PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No 432 / 2009 –SM[BR]**. dated 25.3.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S MAGNUM IRON & STEEL PVT. LTD.
INDUSTRIAL AREA, BANMORE DIST. MORENA (M.P.)
2. Adv. / Consult SHRI V.K.AGARWAL ADV.
B-82, LAJPAT NAGAR PART-II
NEW DELHI -24.

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)
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Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.1085 of 2007-SM (BR)

[Arising out of Orders-in-Appeal No.IND-I/333/2006 dated 31.10.2006 passed by the Commissioner of Central Excise (Appeals-I), Indore (M.P.)]

Date of Hearing/ Decision:25.03.2009

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? : Yes

CCE, Indore (M.P.) ..... Appellants

[Rep. by Shri Sansar Chand, DR and Shri M.M. Singh, DR]

Vs.

M/s. Magnum Iron & Steel Pvt. Ltd. ...Respondent

[Rep. by Shri V.K. Agarwal, Advocate]

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

Final Order No. 4324/09-SM (BR)/Dated:25.03.2009

Per P.K. Das:

Revenue filed this appeal against the Order-in-Appeal No.IND-I/333/2006 dated 31.10.2006 passed by the Commissioner (Appeals), whereby Adjudication Order was set aside. The Adjudicating Authority was directed to check the correctness of the refund claim and allow them to take re-credit of the excess amount deposited by them in June, 2005 in their Personal Ledger Account.

2. Ld. DR on behalf of the Revenue submits that they have deposited the excess amount in their PLA vide Sl.No.4 dated 3.6.2005 and filed the refund claim on 4.7.2006, which is barred by limitation. He further submits that the Commissioner (Appeals) erroneously observed that the respondent could have taken re-credit of the excess amount debited by them. He also submits that the findings of the Commissioner (Appeals) is contrary to the Larger Bench decision of the Tribunal in the case of B.D.H. Industries Ltd. Vs. CCE (Appeals), Mumbai-I reported in 2008 (229) ELT 364 (T-LB). He also submits that the Larger Bench of the Tribunal held that any refund claim even the excess amount would be subject to unjust enrichment. In the present case, the respondent failed to establish that the amount of duty has not been passed to any other person.

3. Ld. Advocate on behalf of the respondent reiterates the findings of the Commissioner (Appeals) He submits that by letter dated 25.05.2006, the applicant claimed the refund of excess amount debited by them, which is duly recorded in the Adjudication Order. He further submits that the refund claim filed on 4.7.2006 is in continuation of the letter dated 25.5.2006 and, therefore, refund is within the period of limitation. In addition to that, he submits that this is a case of excess debit by mistake. He relied on the Hon'ble Karnataka High Court decision in the case of CCE, Bangalore-III Vs. Motorola India Pvt. Ltd. – 2006 (206) ELT 90 (Karnataka),whereby it has been held that payment made by mistake in excess of duty, limitation under Section 11B of the Central Excise Act, 1994 would not apply. He also relied upon the decision of the Tribunal as under:-

(a) Commissioner of Customs, Cochin Vs. Rajesh Chemicals
2006 (196) ELT 64 (Tribunal-Bangalore)

(b) Commissioner of Central Excise (Appeals),Hyderabad
Vs. R.M. Cylinders Pvt. Ltd.
2006 (198) ELT 45 (T-B)

4. After hearing both the sides and on perusal of the records, it is seen that as per ER-1 Report of May, 2005, the total duty was liable to be paid as Rs.56,59,415.00, which they paid from Cenvat Account Rs.46,59,415/- and from PLA Rs,10,50,000/- instead of Rs.10,00,000.00. Thus, there is a excess payment of Rs.50,000/-, for which they claimed refund by their letter dated 25.5.2006. Ld. DR submits that this letter cannot be treated as a refund for the reason that the same was written to the Superintendent of Central excise, who is not the competent authority. He also submits that the refund claim in proper form was filed on 4.7.2006, which is the relevant time in terms of Section 11 B of the Act.

5. I am unable to accept this submission of the ld. DR. It is seen that the respondent by letter dated 25.5.2006 addressed to the Superintedent of Central Excise copy forwarded to the Assistant Commissioner of Central Excise claimed the refund of the excess amount debited by them. This fact was recorded in Adjudication Order. The Original Authority held that the letter was not supported by documents. Subsequently, the respondent filed the refund claim in proper form with documents, which would be treated as a continuation of the earlier letter. So, it is held that the refund claim was filed within the period of limitation. In addition to that, the Tribunal in the case of Rajesh Chemicals (supra) held that excess payment of duty due to arithmetical error cannot be hit by unjust enrichment and unjust enrichment would not apply. In the case of R.M. Cylinders Pvt. Ltd. (supra), the Tribunal held that excess amount paid them, amount of duty required to have been paid and collected on value of clearance, time limit prescribed under Section 11 B of the Act is not applicable. The Hon'ble Karnataka High Court in the case of Motorola India Pvt.Ltd. (supra) held that amount paid by mistake in excess of duty, time barred would not apply. The relevant portion of the said decision is reproduced below:-

> "4. The Tribunal, after noticing the material facts has chosen to allow the claim on the

basis that the amount paid by mistake cannot be termed as duty n the case on hand. The Tribunal also stated that the time bar does not apply in such cases. Somewhat in similar circumstances, the Apex Court in India Cements Lt.d Vs. Collector of Central Excise – 1989 (41) E.L.T. 358 has chosen to accept the case of the assessee. The Madras High Court subsequently noticing the judgement of the Supreme Court has also chosen to hold that the claim is reasonable on the facts of this case. In the light of the case laws, we are of the view that the order of the Tribunal does not require any interference by us. No question of law arises. The order is based on the law laid down by the Apex Court."

7. In the present case, there is no dispute that the respondent debited excess amount by mistake in PLA. So, the decision relied upon by the ld. DR would not apply in this case.

8. After considering the facts and circumstances of the case and the decision of the Hon'ble High Court and Tribunal, 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 25.03.2009.

(P.K. Das)
Member (Technical)

Ckp.