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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/297 /2007 – SM[BR] Date 03/08/2009

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

To :
M/S SHRI VISHNU REFRACTORIES (P)LTD.
OLD INDUSTRIAL AREA, ITRANA ROAD, NEAR
GOVT. POLYTECHNIC COLLEGE, ALWAR.

M/S SHRI VISHNU REFRACTORIES (P)LTD. Appellant

Vs

C.C.E. JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No. 850 / 2009 – SM[BR]** dated 8.7.2009 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. JAIPUR
   N.C.R.B., STATUE CIRCLE, 'C' SCHEME, JAIPUR
   302005
2. Adv. / Consult
   MR.BIPIN GARG
   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
17. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

<u>COURT – III</u>

<u>CENTRAL EXCISE APPEAL NO. 297 OF 2007-SM</u>

[Arising out of Order-in-Appeal No. 257(GRM)CE/JPR-I/2006 dated 15.11.2006 passed by the Commissioner (Appeals), Central Excise, Jaipur]

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 would 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

M/s. Shri Vishnu Refractories Pvt. Ltd., Appellants

Vs.

CCE, Jaipur Respondent

Appearance:

Shri Bipin Garg, Advocate for the appellants;
Shri V.K. Saxena, Jt. C.D.R. for the Revenue

Coram:

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

Date of hearing/decision: 8th July, 2009

FINAL ORDER NO. 850/2009-SM(BR) **dated** 8.7.09

Per P.K. Das:

Relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Refractory Bricks and Tiles classifiable under Sub-heading 6901.90 of the Schedule to the Central Excise Tariff Act, 1985. They filed a refund claim of Rs. 39,004/- on 27.4.2006 which was rejected as time barred. Commissioner (Appeals) upheld the adjudication order.

2. Learned Advocate on behalf of the appellants submits that by adjudication order No. 132/2003 dated 28.08.2003 demand of duty of Rs. 90,502/- was confirmed and penalty of equal amount was imposed. He further submits that subsequently the original authority granted refund vide order-in-original No. 80(Ref.)2003 dated 30.9.2003 in another proceeding and the present demand of duty and penalty were adjusted against the said refund claim. He further submits that the Commissioner (Appeals) subsequently by Order-in-Appeal No. 605-609 dated 14.11.2003 set aside the order-in-original No. 132/03. He also submits that in other proceedings there was a confirmed demand of duty of Rs. 1,02,963/- which was also adjusted vide Order-in-Appeal dated 30.9.2003 along with addendum dated 22.10.2003. He submits that the other amount of Rs. 1,02,963/- was decided in their favour vide Tribunal's Final Order No. 230-233/06-Ex dated 6.3.2006. Thereafter,

they filed refund claim of entire amount of Rs. 1,41,967/- on 27.4.2006. It is his submission that the amount deposited as pre-deposit against the confirmed demand and, therefore, no limitation would apply. In this connection, he relied upon the following decisions of the Tribunal:-

(i) CCE, Chennai-II vs. Rane Brakes Linings Ltd.,
- 2003 (158) ELT 840 (Tri.-Chennai);

(ii) CCE, Ahmedabad-II vs. Navdeep Packaging Inds.
- 2004 (175) ELT 274 (Tri. – Mumbai);

(iii) CCE, Ahmedabad-I vs. Cosmic Dyes & Intermediates Ltd.
- 2004 (169) ELT 209 (Tri. – Mumbai);

(iv) Laxmi Board & Paper Mills Ltd. vs. CCE, Mumbai
- 2007 (208) ELT 384 (Tri. – Mumbai)

3. Learned Jt. CDR reiterates the findings of the Commissioner (Appeals). He submits that the appellants filed refund claim under Section 11B of the Central Excise Act and, therefore, limitation would apply. He also submits that the Commissioner (Appeals) decided the matter vide order dated 14.11.2003 and the refund claim was filed on 27.4.2006 which is hopelessly barred by limitation.

4. After hearing both sides and on perusal of the records, it is seen that vide Order-in-Original dated 30.9.2003 along with addendum dated 22.10.2003 Dy. Commissioner of Central Excise adjusted the refund claim of Rs. 1,46,967/- against the demand of duty of Rs. 39,004/- and demand of Rs. 1,02,963/-. In both the cases the appellants filed appeal

before the appellate authority. By Order-in-Appeal dated 14.11.2003 demand of duty and penalty of Rs. 39,004/- was decided in favour of the appellants. Further, by order dated 6.3.2006 the Tribunal decided the demand of Rs. 1,02,963/- in favour of the appellants. As both the amounts were adjusted by Order-in-Original dated 30.9.2003 along with addendum dated 22.10.2003 the appellants filed refund claim after order of the Tribunal. There is no dispute that the amounts were adjusted against refund claim. The appellants filed appeal before the appellate authority. The Tribunal in the case of Laxmi Board & Paper Mills Ltd. (supra) after relying upon the decision of the Hon'ble Supreme Court in the case of Mafatlal Industries, reported in 1997 (89) ELT 247 (SC) held that ratio laid down by the Constitution Bench of the Hon'ble Supreme Court is clear that the amount deposited by the appellants during the course of investigation of the case shall be deemed to have been paid under protest and, therefore, time limit prescribed under Section 11B (1) of Central Excise Act, 1944 would not applicable to the refund claim in question. I find that the Tribunal is consistently viewed in the above mentioned decision that duty paid while filing appeal to contest the adjudication order is deemed to be payment of duty under protest and limitation under Section 11B of the Act would not apply. In the present case, it has already been observed that demand of duty was adjusted against another refund while filing of the appeal before appellate authority and, therefore, limitation under Section 11B would not apply.

5. In view of the above discussion, impugned order is set aside. Appeal is allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK