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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 11/08/2009

Appeal No. E/2538/2007 – SM[BR]

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

To :
C.C.E BHOPAL
HOSHANGABAD ROAD, 48, ADMINISTRATIVE
AREA, AREA HILLS, BHOPAL (M.P.) 462011 Appellant
Vs
C.C.E BHOPAL Respondent

M/S KELTECH ENERGIES LTD.

I am directed to transmit herewith a certified copy of **Final order No**. 909 / 2009 –SM[BR] dated 7.7.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S KELTECH ENERGIES LTD.
P.O. JAMUDI, DISTT. ANUPPUR (MP)
2. Adv. / Consult SHRI HARENDRA SINGH , GENERAL MANGER
M/S RESPONDENT;--------------------

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

COURT – III

CENTRAL EXCISE APPEAL NO. 2538 OF 2007-SM

[Arising out of Order-in-Appeal No. 37-CE/BPL/2007-08 dated 29.06.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal]

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?	No.
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 Departmental authorities?	Yes.

CC & CE, Bhopal — Appellant

Vs.

M/s. Keltech Energies Ltd., — Respondent

Appearance:

Shri S. Gautam, D.R. for the Revenue;
Shri Harendra Singh, General Manger of respondent company

Coram:

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

Date of hearing/decision: 7th July, 2009

FINAL ORDER NO. 909/2009 SM(BR) **dated** ________

Per P.K. Das:

The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of Industrial Explosives classifiable under Sub-heading 3602.00 of the Schedule to the Central Excise Tariff Act, 1985. They were supplying explosives to a subsidiary of M/s. Coal India Ltd. on the basis of provisional price of Rs. 14,144/- per M.T. Subsequently, price was finalized at a lower rate i.e. Rs. 13,282/- per M.T. The respondent filed refund claim of excess amount of differential duty paid by them. The original authority sanctioned the refund claim. Revenue filed the appeal before the Commissioner (Appeals) which was rejected. Hence, Revenue filed this appeal.

2. Learned D.R. reiterates the grounds of appeal. He submits that the Commissioner (Appeals) failed to appreciate the Board's Circular No. 317/33.97-CX dated 18.6.97 clarifying that even if credit note is issued and duty collected is refunded by cheque, the doctrine of unjust enrichment still applies and refund cannot be granted. He also submits that the Commissioner (Appeals) failed to appreciate the decision of the Tribunal in the case of Sangam Processors (Bhilwara) Ltd. vs. CCE, Jaipur, reported in 1994 (71) ELT 989 (Tribunal).

3. Learned representative on behalf of the respondents reiterates the findings of the Commissioner (Appeals). He relied upon the decision of

the Commissioner (Appeals) in the case of Birla Erission Optical Ltd. vs. CCE, Bhopal, reported in 2003 (157) ELT 97.

4. After hearing both sides, I find that the respondent is a manufacturer of explosives and supplied the same to Northern Coalfields Ltd. (A Govt. of India Undertaking). They cleared the goods on provisional price of Rs. 14,144/- per M.T. as per contract. On finalization of price at Rs. 13,282/- per M.T. the respondents claimed refund of differential duty. I find that on the identical facts the Tribunal in the case of CCE, Nagpur vs. Solar Capital Ltd., reported in 2006 (205) ELT 403 (Tri.-Mum.) allowed the refund claim. For the proper appreciation of facts relevant portion of the said decision is reproduced below:-

"Heard both sides. The appellants supply the impugned goods to M/s. Coal India Ltd. (CIL), a public sector company. They had a contract with CIL for the period 2001-02 for supply @ Rs. 14,414/- PMT, which was valid up to 30.6.2002. BY a letter dated 12.8.2003, CIL requested them to continue supply at the same rate provisionally. Such supply was made provisionally for the impugned period from 1.7.2003 to 29.2.2004. However, it is not in dispute that the contract was renewed for this period for supply @ Rs. 13,282/- PMT and that the appellants have paid back the excess amount and excess duty to M/s. CIL. Hence, the impugned order passed by the lower appellate authority allowing the refund to the appellants appears to be in order and is also in conformity with the precedent decisions of the Tribunal cited by him. Hence, the same requires no interference."

5. It is noted that the Tribunal in the case of Universal Cylinders Ltd., reported in 2004 (175) ELT 202 (Tribunal) held that if the assessee entered into contract with their customers contain price variation clause and customer refusing to pay the higher price of goods, deducted the differential amount from payment already made to assessee, Revenue cannot claim that incidence of duty has been borne by the assessee's customers. I have also noted that the Tribunal in the case of Special Glass Ltd. vs. CCE, Raipur, reported in 2005 (192) ELT 331 (Tri.-Del.) has taken similar view. In the present case, it appears that customers adjusted the excess amount in the subsequent Bills and Dr certificate was also submitted. Hence, the case laws cited by the learned D.R. is not applicable in the present case. In view of the above discussion, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK