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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/126 /2005 – 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 PRESVELS PVT.LTD.

I am directed to transmit herewith a certified copy of **Final order No.** 910 / 2009 –SM[BR] dated 10.7.2009

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 PRESVELS PVT.LTD.
   PLOT NO-15,22,23-A SECTOR-C,INDUSTRIAL AREAJ MANDIDEEP DISTT RAISEN M.P.
2. Adv. / Consult
   MR.Z. U. ALVI
   D-8,BDA COLONY, ADJACENT GARUDA TRAVELS. KOH-E-FIZA BHOPAL-01

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-1
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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

COURT – III

EXCISE APPEAL NO. 126 OF 2005-SM

[Arising out of Order-in-Appeal No. 589-CE/BPL/2004 dated 17.8.2004 passed by the Commissioner (Appeals-II), 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?	
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

CCE, Bhopal — Appellant

Vs.

M/s. Presvels Pvt. Ltd., — Respondent

Appearance:

Shri R.K. Verma, D.R. for the Revenue;
Shri Z.U. Alvi, Advocate for the respondent

Coram:

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

Date of hearing/decision: 10th July, 2009

FINAL ORDER NO. 910/2009 SM(Br) **dated** ______

Per P.K. Das:

Revenue filed this appeal against Order-in-Appeal No. 589-CE/BPL/2004 dated 17th August, 2004.

2. The relevant facts of the case, in brief, are that the respondents are engaged in the manufacture of LPG Cylinders. They were supplying LPG cylinders to various oil companies on the basis of provisional price as per contract. They paid duty on the basis of provisional price and after finalization of price they filed refund claim of Rs. 14,00,341/- on excess payment of differential duty. Original authority sanctioned the refund claim of Rs. 1,33,219/- which was to be credited in their Cenvat Credit account and the balance amount of Rs. 12,67,122/- was rejected on the ground of time barred. Revenue filed appeal before the Commissioner (Appeals) against refund of Rs. 1,33,219/-. The respondents also filed appeal against rejection of refund claim of Rs. 12,67,122/-.

3. Commissioner (Appeals) vide Order-in-Appeal No. 209-210-CE/BPL/2004 dated 31.3.2004 set aside the adjudication order and allowed the refund claim of Rs. 12,67,122.00. Further, by the impugned order dated 17.8.2004 which is the subject matter of the present appeal, the Commissioner (Appeals) rejected the appeal filed by the Revenue.

4. Revenue filed appeal against the order-in-appeal dated 31.3.2004 before the Tribunal. By Final Order No. 861/04-B dated 8.10.2004 the

Tribunal set aside the order of the Commissioner (Appeals) and remanded the matter to the Commissioner (Appeals) to decide afresh in the light of the observations made in the said order. By Order-in-appeal No. 816-817-CE/BPL/2004 dated 11.1.2005 the Commissioner (Appeals) rejected the appeal filed by the Revenue. Learned Advocate submits that as per his instructions, no appeal was filed by the Revenue against the said order. In the present appeal the Revenue challenged the impugned order dated 17.8.2004 whereby refund of Rs. 1,33,219.00 was upheld.

5. Learned D.R. on behalf of the Revenue reiterates the grounds of appeal. He submits that the Commissioner (Appeals) while deciding the Revenue's appeal against refund sanctioned by the Dy. Commissioner, has gone on to allow the refund of the amount which had been originally rejected by the Dy. Commissioner. Thus the impugned order passed by the Commissioner (Appeals) beyond the scope of the department appeal. He further submits that the Commissioner (Appeals) failed to appreciate that the respondents had not deposited the duty as per provisional assessment. He further submits that the Commissioner (Appeals) relied upon the decision of the Madras High Court in the case of Addison & Co. vs. CCE, reported in 2001 (126) ELT 44 which has been challenged by the Revenue before the Hon'ble Supreme Court. He further submits that the Hon'ble Supreme Court in the case of Sangam Processors reported in 1994 (71) ELT 989 (Tri.) held that even though subsequently credit note have been issued would satisfy the principle of Unjust Enrichment.

6. Learned Advocate on behalf of the respondents reiterates the findings of the Commissioner (Appeals). He submits that the Commissioner (Appeals) had not passed any order in respect of amount, which was rejected by the Deputy Commissioner. It is his submission that they have filed appeal against the rejection of balance amount of refund, which have already been decided by the Commissioner (Appeals) by Order-in-Appeal dated 11.1.2005 in their favour. He also submits that it is revealed from the order of the Tribunal dated 8.10.2004 that the said appeal relates to the limitation and principle of Unjust Enrichment. He also submits that the original authority allowed the refund claim of Rs. 1,33,219/- as it was filed within the time limit as envisaged under Section 11B of Central Excise Act, 1944. Regarding unjust enrichment, he submits that the Revenue has not taken any ground in their appeal. Even then, he submits that the Tribunal in the case of CCE, Jaipur vs. Universal Cylinders Ltd., reported in 2004 (175) ELT 202 (Tri.-Del.) held that provisional price of LPG cylinders initially fixed reduced by the buyer, doctrine of Unjust Enrichment would not be attracted. He also submits that the decision of the Tribunal in the case of Universal Cylinders Ltd. (supra)was upheld by the Hon'ble Supreme Court as reported in 2005 (179) ELT A41 (SC).

7. After hearing both sides and on perusal of the records, I find that the original authority sanctioned the refund of Rs. 1,33,219/- as it was filed within the time limit as prescribed under Section 11B of the Act.

The balance amount of Rs. 12,67,122/- was rejected on the ground of time bar. Commissioner (Appeals) already decided the rejection of refund of Rs. 12,67,122/- in favour of the respondent in separate order. So, the contention of the learned D.R. that in the present impugned order, Commissioner (Appeals) allowed refund of the said amount is not sustainable. Regarding unjust enrichment, finding of the original authority is as under:-

"As regards question of unjust enrichment, I find that the Oil Companies have deducted the amount paid in excess by them from subsequent bills. The documents submitted before me prove that incidence of duty has been borne by the party and has not been passed on to any other person. In view of above, I pass the following order."

8. The submission of the learned D.R. in respect of unjust enrichment cannot be accepted for the reason that the original authority allowed the refund claim after verification of the evidences which were not disputed by the Revenue in the grounds of appeal. The contention of the learned D.R. is that the assessment was not provisional, lost relevancy as refund claim was filed within the stipulated period under Section 11B of the Act.

9. In view of the above discussion, I do not find any merit in the appeal filed by the Revenue. Accordingly, appeal filed by the Revenue is rejected.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

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