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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/2225/2007 – SM[BR] Date 14/10/2009

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

To :
M/S AMD METPLAST (P) LTD. (NOW AMD METPLAST LTD.)
C-10, SITE-3, MEERUT ROAD, INDL. AREA,
GHAZIABAD, U.P.

M/S AMD METPLAST (P) LTD. (NOW AMD METPLAST LTD.) Appellant

Vs

C.C.E. GHAZIABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1240 / 2009 –SM[BR] dated 4.8.2009 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. GHAZIABAD
   C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.2225 of 2007-SM (BR)

[Arising out of Order-in-Appeal No.40-CE/GZB/2007 dated 27.04.2007 passed by the Commissioner of Central Excise (Appeals), Ghaziabad (U.P.)]

Date of Hearing/ Decision: 04.08.2009

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.		No
2. Whether it should 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

M/s. AMD Metplast (P) Ltd. ...Appellants
(Rep. by Shri Bipin Garg, Advocate & Shri A. Gupta, Company Secretary)

Vs.

CCE, Ghaziabad ....Respondent
(Rep. by Shri Ishtikhar Baig, SDR)

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

Final Order No...1240/2009 SM (BR)/Dated:04.08.2009

Per P.K. Das:

The appellant filed this appeal against rejection of refund claim of Rs.9,31,360/- under Section 11 B of the Central Excise act, 1944.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Crown Cork classifiable under Heading No.8309 of the Schedule to the Central Excise Tariff Act, 1985. They have also undertaken Printing of Steel Sheets, which is known as Printed Sheets classifiable under sub-heading no.7210.30. During the period, from 28.2.2004 to 18.3.2004, they cleared printed sheets to their sister unit on payment of duty @ 16% Adv., which should be 8% Adv. as per Notification No.6/2002-CE dated 1.3.2002, as amended by Notification No.16/2004-CE dated 28.2.2004. The sister unit availed credit of the entire amount of Rs.18,62,719/- The jurisdictional Central Excise Officers insisted the sister unit to reverse the excess credit of Rs.9,31,360/- (i.e. 8% Adv.). Accordingly, the sister unit reversed the said amount on 31.1.2005. Then, the appellants took the suo moto credit in their Cenvat Account on 25.2.2005. They also filed a refund claim of Rs.9,31,360/- . The Original Authority rejected the refund claim on the ground of time bar and it is hit by doctrine of unjust enrichment. The Commissioner (Appeals) upheld the adjudication order on unjust enrichment.

3. Ld. Advocate on behalf of the appellants submits that the Commissioner (Appeals) rejected the refund claim on the ground of unjust enrichment as it was debited on account of duty in favour of buyer by issuing a Credit Note on 19.1.2005. It is contended that they have

placed Chartered Accountant's Certificate in support of their contention that the incidence of duty has not been passed to any other person, which was not considered by the Commissioner (Appeals). He also submits that the appellants supplied the Printed Sheets to their sister unit, who manufactured Crown Cork and, therefore, there is no scope to pass the incidence of duty to any other person. He also submits that by letters dated 19.1.2005 and 2.2.2005, they requested to allow them to take credit in their Cenvat Account. He also submits that in reply to their letters dated 1.3.2005, the Superintendent of Central Excise directed them to file the refund claim in proper form, which they have filed on 10.03.2005. It is his contention that their claim dated 10.03.2005 is in continuation of their letter dated 19.01.2005

4. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the appellants had not submitted the Chartered Accountant's Certificate before the Original Authority. He further submits that the letter produced by the Advocate was not placed before the lower authorities. He also submits that the Chartered Accountant's Certificate was issued after passing of the adjudication order. He also submits that the appellants filed refund claim on 10.03.2005, which is barred by limitation under Section 11 B of the Act. He further submits that the appellants availed the suo moto credit in their Cenvant Account as well as they also filed refund claim, which is

mis-leading to the Department and, therefore, they are not eligible for refund of duty.

5. After hearing both the sides and on perusal of the records, I find from the order of the Commissioner (Appeals) that the amount in question was charged by the appellants in their invoice. In terms of Section 12 B of the Central Excise Act, 1944 every person, who has paid the duty of excise on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyers of such goods. In the present case, there is no dispute that the appellants charged the duty in their invoices and the presumption is that the incidence of duty has been passed on to the buyer even it is a sister unit. Therefore, the principle of unjust enrichment would apply. I agree with the finding of the Commissioner (Appeals) that mere issuing Credit Notes, it cannot be proved that the incidence of duty has not been passed on to the buyers. In any event, it is seen from the impugned order that the appellants produced the Chartered Accountant's certificate, which was not considered. It is noticed that the appellants have not placed the Chartered Accountant's Certificate before the Original Authority The contention of the ld. DR is that the appellants availed the credit suo moto as well as filed the refund claim. In this context, ld. Advocate submits that another proceeding was initiated against the suo moto credit. In any event, in the present case, the

Commissioner (Appeals) rejected the refund claim on unjust enrichment and, therefore, the availment of suo mo credit has no relevancy. To meet the ends of justice, in my view, the evidences placed by the appellants are required to be examined. Ld. DR submits that the refund claim was not filed within the stipulated period. Ld. Advocate placed the copies of the letters dated 19.1.2005 and 2.2.2005, which were also not placed before the lower authorities as contended by the ld. DR.

6. In view of the above discussions, I set aside the impugned orders. The matter is remanded back to the Original Authority to decide the matter afresh after considering the evidences placed by the appellants. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 3.8.2009.

(P.K. Das)
Member (Judicial)

Ckp.