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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. ST/597 / 2009 & ST/ 691 / 2009 -SM[BR] Date 04/12/2009

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

To :
M/S MOENUS TEXTILE PRIVATE LIMITED
C-3, INDUSTRIAL AREA PHASE-II, MANDIDEEP
DISTT- RAISEN(MP)

[2] M/S MOENUS TEXTILS PVT.LTD.
C-3, INDUSTRIAL AREA PHASE-II MANDIDEEP
DISTT; RAISEN[M.P]

M/S MOENUS TEXTILE PRIVATE LIMITED Appellant

Vs

C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.**1485 – 1486 / 2009 -SM[BR] dated 1.12.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent

   C.C.E BHOPAL

   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult

   MR.P.C.KASHIV

   E-3/49,STOP NO 10,KAMDAR MARKET,BHOPAL

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, COURT NO. III**

**Service Tax Appeal No. 597 of 2009-SM(BR)**

[Arising out of Order-in-Appeal No. 228/BPL/APPL/2009 dated 27.5.2009 passed by Commissioner (Appeals) Central Excise & Service Tax, Bhopal]

**Service Tax Appeal No. 691 of 2009-SM(BR)**

[Arising out of Order-in-Appeal No. 227/BPL/APPL/2009 dated 26.5.2009 passed by Commissioner (Appeals) Central Excise & Service Tax, Bhopal]

**For approval and signature**:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

| | | |
|---|---|---|
| 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | : | Yes |
| 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | Yes |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : | Seen |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | Yes |

M/s. Moenus Textile Private Ltd. — Appellants

Vs.

Commissioner of Central Excise & Service Tax, Bhopal — Respondent

**Appearance**:

Shri P.C. Kashiv, Consultant for the Appellants
Shri R.K. Saini, DR for the Respondent

Date of Hearing/decision : 01.12.2009

**ORAL ORDER NO.** 1485 - 1486/2009 SM BR)

**Per M. Veeraiyan**:

Appeal No. ST/597/09 is against the order of the Commissioner (Appeals) No. 228/BPL/APPL/2009 dated 27.5.2009. Appeal No. ST 691/09 is against the order of the Commissioner (Appeals) No. 227/BPL/APPL/2009 dated 26.5.2009.

2. Heard both sides.

3.1 The relevant facts, in brief, are that the appellant filed on 25.8.08 a refund claim of Rs.64,334/- in respect of service tax paid in relation to the exported goods, the export of which took place during the months of August, 2007 to December, 2007.

3.2 Another claim for Rs. 97,288/- in respect of Service tax relating to goods exported during the period January, 2008 to March, 2008 was filed on 2.12.08.

3.3 The original authority rejected both the claims as time barred. The Commissioner (Appeals) has upheld the order of the original authority.

4. Learned Consultant fairly concedes that claim relating to the period August, 2007 to December, 2007 which was filed on 25.8.08 is clearly time barred and, therefore, he is not pressing for the relief claimed in Appeal No. 691/09. However, he submits that the refund claim relating to January, 2008 to March, 2008 has been filed within time. He relied on the Circular of CBEC No. 112/6/09-ST dated 12.3.09, according to which the claim relating to quarter ending March, 2008 and the quarter ending June, 2008

could be filed before 31.12.08 and, in his case, the claim has been filed on 2.12.08. Therefore, the same should have been allowed.

5. Learned DR reiterates the finding of the Commissioner (Appeals) in respect of claim relating to period for the quarter ending March, 2008.

6. I have carefully considered the submissions of both sides. The clarification of Board dated 12.3.09 specifically permits the refund relating to quarter ending March, 2008 to June, 2008 can be filed till 31.12.08. The quarters referred in the said clarification are to be treated as quarters ending March 2008 and quarters ending June 2008. In as much as the claim for quarter ending March, 2008, has been filed on 2.12.08, the claim is within the time limit prescribed. In view of the above, I hold that the orders of the lower authorities are not sustainable. I find that the original authority has rejected the claim without going into the merits of the claim but only on the ground of time bar. Commissioner (Appeals) has also not gone into the merits of the claim. Therefore, after setting aside the orders of the lower authorities, I remand the matter to the original authority for fresh consideration of the claim relating to quarter ending March, 2008 after granting reasonable opportunity of hearing to the appellants.

7. In view of the above Appeal ST/691/09 is rejected and the Appeal No. ST/597 /09 is allowed by way of remand on the above terms.

( M. Veeraiyan )
Member(Technical)

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