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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/148 /2006 - EX[DB] Date 02/12/2009

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

To :
INDIAN FARMERS FERTILISER COPERATIVE LTD.
P.O. IFFCO TOWNSHIP, DISST, BAREILLY.
INDIAN FARMERS FERTILISER COPERATIVE LTD. Appellant
Vs
C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1262/ 2009 EX[DB]** dated 27-11-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. LUCKNOW
   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult SH. HARBHAJAN SINGH,
   INDIAN FARMERS FERTILISES COOP. LTD.,
   34, NEHRU PLACE, N. DELHI-19
3. C.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
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No. 148/2006-Ex(Br)

(Arising out of order in appeal No. 454/CE/2005 dated 14.10.2005 passed by the Commissioner of Central Excise (Appeals), Lucknow)

Hon'ble Mr. M. Veeraiyan, Technical Member
Hon'ble Mr. D.N. Panda, Judicial Member

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 Indian Farmers Fertiliser Cooperative Ltd — Appellant

Vs

CCE, Lucknow — Respondent

Appeared for the Appellant : Shri Harbhajan Singh, Co. Representative

Appeared for the Respondent : Shri Vijay Kumar, SDR

Coram: **Hon'ble Mr. M. Veeraiyan, Technical Member**
Hon'ble Mr. D.N. Panda, Judicial Member

Date of Hearing: 25.11.09

FINAL Order No. 1262/09-EX /2009

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) bearing No. 454/CE/2005 dated 14.10.2005.

2. Heard both sides extensively.

3. The relevant facts in brief are that the appellants were receiving raw naphtha under Chapter X Procedure from M/s Indian Oil Corporation, Mathura Refinery. A dispute was raised by the jurisdictional Central Excise Authorities, incharge of appellant unit, that receiving the raw naphtha under Chapter X Procedure was not legal and proper and accordingly the appellants were directed to deposit the duty forgone. The appellants paid the disputed amount under protest. This dispute came before Tribunal and Tribunal by its order dated 22.1.1999 ordered for denovo decision of the dispute. In the denovo proceedings, it was held that the appellants were eligible to get raw naphtha duty free and accordingly the refunds have been paid to the appellants.

4. Meanwhile the appellants themselves without waiting for the decision of CESTAT stared procuring duty paid naphtha during the period 8.2.1998 to 11.5.1998. Subsequent to receipt of the Tribunal's order dated 21.1.1999, the appellants filed a refund claim with the jurisdictional Assistant Commissioner seeking refund of Rs.1,22,09,768.74. The above facts have been narrated in the application for refund dated 31.8.1999. The Original Authority rejected the refund claim holding that the party has not paid duty

under protest and therefore, the claim having been preferred after the prescribed period of six months under Section 11-B, the claim was time barred. He has also observed that the appellants failed to produce any evidence to prove to the satisfaction of the Assistant Commissioner that such goods were cleared for manufacture of fertilizer and ammonia or that they had followed Chapter X Procedure.

5. On appeal, the Commissioner(Appeals) upheld the order of the original authority holding that even in their own case, the Tribunal's order dated 22.1.999 has been dictated in the open Court and therefore, claim at any rate should have been filed on 22.7.1999 and accordingly held the claim as time barred. She has not gone into other issues raised by the appellants.

6. The learned Authorized Representative for the appellants submits that for the period 8th February 1998 to 11th May, 1998, the appellants were receiving duty free naphtha following Chapter X Procedure. At the instance of the Department, they were forced to pay the duty and after agitating the matter got the refund of duty paid by them. As they were denied C-2 certificate by the department, they have chosen to buy duty paid raw naphtha from Indian Oil Corporation. They protested payment of duty with IOC and they have also protested before the concerned Central Excise Authorities. Since on the same issue, they have got a favourable decision for earlier period and the said order of the Tribunal was communicated to them on 12.3.1999, filing of refund claim on 31.8.1999 was well within time. At any rate, they have paid the duty to IOC under protest and therefore, claim was not time

barred. He relies on the decision of the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd Vs Union of India reported in 1997 (89) ELT 247 (SC) particularly paras 85,86, 99.3.

7. . Learned SDR submits that the dispute relating to earlier period is in respect of duty paid by the appellants themselves. In the present period relating to 8th February to 11th May, 1998, the duty has been paid by IOC even according to the appellants. It is not a case of IOC having filed any protest with the Department. He also submits that it is not a case of IOC claiming the refund of duty paid by them. As a buyer, claim for refund has to be within the time limit specifically prescribed under Section 11-B. He relies on the decision of the Hon'ble Supreme Court in the case of Dena Snuff (P) Ltd Vs. CCE, Chandigarh reported in 2003 (157) ELT 500 (SC) and submits that in any case, they have not filed refund claim within six months from 21.1.1999.

8. We have carefully considered the submissions from both sides. The dispute on which the Tribunal rendered the decision on 22.1.999 is on a different footing. It dealt with a claim of demand made on the appellants themselves and the issue has been remanded back by the Tribunal for fresh consideration by the authorities below. The decision of the Tribunal dated 22.1.1999 was in favour of the appellants holding that they were entitled to receive raw naphtha for generation of electricity which was used in the manufacture of fertilizer. The letter of the appellants dated 31.8.1999 addressed to the Assistant Commissioner clearly narrates the above sequence of events. The appellants themselves in the said letter have clearly admitted that "This procurement

period is not covered in CEGAT order mentioned in para 1". In addition, it has also been submitted "We ourselves without waiting for judgment of CEGAT started procuring duty paid naphtha from 8th February to 11th May, 1998." From this, it is clear that the appellants themselves have chosen to procure naphtha from IOC on payment of duty. Since the procurement was under payment of duty, obviously Chapter X Procedure has not been followed as rightly observed by the original authority. There was no occasion to see whether the goods have been used for the purpose claimed to have been used. If the manufacturer paid duty under protest, naturally he gets protection from time bar for claiming refund. We are not in a position to agree that buyers of the excisable goods from any manufacturer (which may run to 100, 1000 and sometimes in lakhs) will be entitled to protest the assessment by challenging the rate of duty or valuation adopted by manufacturer from whom they are buying the goods. They are entitled to claim the refund within the time limit prescribed under Section 11-B provided the manufacturer is entitled to the refund. In respect of claim of refund by a buyer of any excisable goods, the time limit prescribed is six months from the date of purchase of goods. It is not the case of the appellants that they have filed the refund claim within six months. It is not even the case of the appellants that they have filed the refund claim within six months from the order of the Tribunal which was dated 22.1.1999.

9. In view of the above, we do not find any reason to interfere with the order of the Commissioner (Appeals) holding the refund claim as time barred.

10. The appeal is ,therefore, rejected.

(Order dictated and pronounced in the open Court)

(M. Veeraiyan)
Technical Member

(D.N. Panda)
Judicial Member

MPS*