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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/1910/2009 – SM [BR]

Date **25/01/2011**

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

To :
M/S AUTO STEELS ,
70, SHIVAJI MARG, INDLS. AREA, NEW
DELHI-110015.

M/S AUTO STEELS ,

Appellant

Vs

C.C.E. DELHI I

Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 77 / 2011 - **SM[BR]** dated 13.1.2011 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. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002
2. Adv. / Consult SHRI SUNIL BAHAL, PARTNER OF CO.
M/S APPELLANT:--------------------
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III
Excise Appeal No. 1910 of 2009 (SM)

[Arising out of the Order-in-Appeal No. 34/CE/DLH/2009 dated 01/04/2009 passed by The Commissioner (Appeals), Central Excise, New Delhi.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, 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?	:
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 Department Authorities?	:

M/s Auto Steels — Appellant

Versus

CCE, Delhi – I — Respondent

Appearance

Shri Sunil Bahal, Partner of Co. Representative – for the appellant.

Shri K.P. Singh, Authorized Representative (SDR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 13/01/2011.

final Order No. 77 / 2011 SM (BR) Dated : ____________

Per. Rakesh Kumar :-

The appellant are manufacturer of leaf spring, chargeable to Central Excise Duty. They also avail Cenvat credit of duty paid on inputs under Cenvat Credit Rules, 2004. At the end of financial year 2004-2005 when they opted for availing of SSI exemption for the next financial year, as per the provisions of Cenvat Credit Rules, 2004 they were required to pay an amount equal to the Cenvat credit involved on the inputs lying in stock, inputs in process and also the inputs contained in the finished products lying in the stock. However, while paying this amount on 7/4/05, they paid an excess amount of Rs. 40,508/-. They realized this mistake only in November 2006 when refund application was filed under Section 11B of the Central Excise Act, 1944 on 14/11/06. This refund application was dismissed on the ground of time bar by the Deputy Commissioner vide order-in-original dated 3/9/07. The Deputy Commissioner's order was confirmed by the CCE

(Appeals) vide order-in-appeal dated 1/4/09. Against this order, the present appeal has been filed.

2. Heard both the sides.

3. Shri Sunil Bahal, Partner of the appellant company, pleaded that since the refund claim is of Cenvat credit, the limitation period prescribed under Section 11B will not apply and that since the amount actually reversed was higher than the amount which was required to be reversed, the extra amount paid cannot be retained by the department and its refund should be allowed and the limitation period prescribed under Section 11B will not be applicable.

4. Shri K.P. Singh, learned Departmental Representative defended the impugned order by reiterating the Commissioner (Appeals)'s finding and emphasized that the claim for refund of claim is covered by Section 11B and since the refund claim has been filed under Section 11B, the department is bound by the limitation period prescribed therein.

5. I have carefully considered the submissions from both the sides and perused the records.

6. The claim for refund of the extra amount paid in terms of the provisions of Rule 11 (2) of the Cenvat Credit Rules, 2004 is the refund claim for excess Cenvat credit reversed, which is clearly covered by the provisions of Section 11B. There is no dispute that the refund claim has been filed under provisions of Section 11B. In view of this, the same would be covered by the limitation period prescribed under this section and since there is no dispute that the refund claim had been filed after expiry of the prescribed limitation period of one year from the relevant date, the same has been rightly rejected as time barred. I, therefore, do not find any infirmity in the impugned order. The appeal is dismissed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK