

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/3022/2009 – SM[BR]

Date 25/08/2011

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

To :
M/S PRONTOS STEERING LTD.
PLOT NO. 3,4 & 5, SECTOR-V, PARWANOO (H.P.)
M/S PRONTOS STEERING LTD.

Appellant

Vs
Respondent

dated 2.8.2011

C.C.E. CHANDIGARH

I am directed to transmit herewith a certified copy of **Final order No.509 / 2011-SM[BR]**
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. CHANDIGARH
C.R. BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH
160017
2. Adv. / Consult
MR.G.S.BHANGOO
H.NO. 5, SECTOR-10A, CHANDIGARH.
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publications 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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070
12. Office Copy
13. 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. IV
Excise Appeal No. 3022 of 2009 (SM)**

[Arising out of the Order-in-Appeal No. 287/CE/CHD/2009 dated 12/08/2009 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

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 Prontos Steerings Ltd. Appellant

Versus

CCE, Chandigarh – I

Respondent

Appearance

Shri Vikrant Kakria, Advocate – for the respondent.

Shri Anil Khanna, Authorized Representative (DR) – for the
appellant.

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

DATE OF HEARING : 02/08/2011.

Final Order No. 509/2011 SM (Br) Dated : _____

Per. Rakesh Kumar :-

The duty demand of Rs. 7,96,000/- alongwith interest was confirmed against the appellant by the original Adjudicating Authority vide order-in-original dated 25/8/06 in addition to confirmation of duty demand also imposed penalty on the appellant under Section 11AC. However, before the adjudication, the appellant had paid an amount of Rs. 2,67,100/- in various instalments during the period from 20/11/04 to 10/3/05. However, on appeal being filed, the Commissioner (Appeals) vide order-in-appeal dated 29/12/06 set aside the Assistant Commissioner's order. The order was dispatched by post on 10/1/07 and was received by the appellant on 27/1/07. There is no dispute about the receipt of the order-in-appeal by the appellant. On the basis of the Commissioner (Appeals)'s order, the appellant become entitled eligible for refund of Rs. 2,67,100/- paid by them and

they filed refund claim on 24/01/08 to the Assistant Commissioner. ~~_____~~ The refund claim was rejected by the Assistant Commissioner vide order-in-original dated 4/2/09 on the ground that the same is time barred. According to the Assistant Commissioner, since the relevant date for filing claim in this case, in accordance with the provisions of Explanation B (ec) to Section 11B, is the date of the order and since the Commissioner (Appeals)'s order had been issued on 9/1/07, the refund claim should have been filed within the period of one year from 9/1/07, while it has been filed on 24/1/08. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide order-in-appeal dated 20th August 2009 upheld the Assistant Commissioner's observing that as per the records, the Commissioner (Appeals)'s order had been handed over to the postal authority at GPO on 10/1/07 and, hence, the same has to be taken as the date of dispatch and the words "date of the order" in Clause (ec) of the Explanation (B) to Section 11B mean the date of dispatch and not the date of communication of the order. Against this order of the Commissioner (Appeals), the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Vikrant Kackria, Advocate, the learned Counsel for the appellant, pleaded that there is no dispute that the Commissioner (Appeals)'s order, which had been issued on 9/1/07 has been received by the appellant on 27/1/07, that unless the appellate order on the basis of which the appellant became eligible for refund claim, was communicated to them , they could not file the refund claim, that in view of this, the limitation period would start from the date of communication of the order, that in this regard he relies upon the judgment of Hon'ble Supreme Court in the case of **CCE vs. M.M. Rubber Co.** reported in **1991 (55) E.L.T. 289 (S.C.)**, wherein in para 13 of the judgment, Hon'ble Supreme Court has held that Courts have uniformly laid down as a rule of law that for seeking the remedy, the limitation starts from the date on which the order was communicated to a party or the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains, that the knowledge of the party affected by such a

decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him, and that in view of this, it is the date of communication which has to be treated as the relevant date for counting limitation period and since the order had been received on 27/1/07 and the refund claim has been filed on 24/1/08 and the same was within time.

2.2 Shri Anil Khanna, the learned Departmental Representative, pleaded that the Clause (ec) of the Explanation (B) to Section 11B provides that in a case where the duty becomes refundable by decree or direction of Appellate Authority, Appellate Tribunal, or any court, the date of such judgment of the order or direction would be the relevant date, that in view of clear provisions of the law, it is the date of appellate order or decree which would be treated as the "relevant date" from which the limitation period of one year would start, that he relies upon judgment of Hon'ble Supreme Court in the case of **Mafatlal Industries Ltd. vs. Union of India** reported in 1997 (89) E.L.T. 247 (S.C.), wherein it has been held that the refund claim filed under Section 11B, except where the levy has been held to be

unconstitutional are to be ^{treated as filed} under the provisions of Section 11B ^{of} the Central Excise Act, and that when in terms of the provisions of Section 11B, in the case of refund claim arising out of an appellate order, it is the date of the order, which is the relevant date for counting the limitation, ⁱⁿ words, ^{the} the date of the order cannot be interpreted as the date of communication.

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

4. The limitation period prescribed under Section 11B for filing the refund claim is one year from the relevant date. The term "relevant date" in the case where the duty becomes refundable as the consequences of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court has been defined in Explanation B (ec) of Section 11B as the "date of such judgment, decree or direction." Unlike the judgments of the Courts or Tribunals which are either dictated in the open Court or are pronounced in the open court and thus the date of the pronouncement and date of the communication to the affected parties are same, in case of

adjudication of any dispute by the Departmental Adjudicating Authorities or Commissioner (Appeals), the judgments are not pronounced or dictated in presence of the parties but are sent by post and thus, there would be a time gap between the date on which the order has been signed, the date of dispatch and the date on which the order is received by the assessee. The point of dispute, thus, in this case is as to whether the words "date of such judgment, decree order or direction" used in Clause (ec) of Explanation (B) to Section 11B refer to the date of signing of the order or date of dispatch order or the date of actual communication of the order to the assessee. The Commissioner (Appeals) has held that it is the date of dispatch of the order, which would be the date of the order for the purpose of counting the limitation period. However, I find that Hon'ble Supreme Court in the case of **CCE vs. M.M. Rubber Co.** (supra) while considering the question of relevant date for the calculating the limitation period for the purpose of review under Section 35E (1) of the Central Excise Act, has in para 13 of the judgment, observed as under :-

"13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made aware of passing of such order. Therefore

Courts have uniformly laid down as a rule of law that for seeking the remedy, the limitation starts from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set. This is based upon, as observed by Rajamanner, CJ in *Muthia Chettiar v. CIT* (supra) "a salutary and just principle". The application of this rule so far as the aggrieved party is concerned is not dependent on the provisions of the particular statute, but it is so under the general law."

5. From the above observations of the Hon'ble Supreme Court, it is clear that when some order of Court or an authority affects an assessee, the limitation would start from the date on which the order was communicated to the assessee or the date on which it was pronounced or published so that the party affected by which have reasonable opportunity of knowing of the passing of such an order and what it contains. Following the judgment of the Apex Court in the case of **CCE vs. M.M. Rubber Co.** (supra), I hold that the limitation

period would start from the date of the communication of the order and not the date of signing of the order or the date of dispatch and as such with regard to the order passed by Departmental Adjudicating Authority, ~~of~~ Commissioner (Appeals) the words – “date of judgment” have to be interpreted as the date of communication of the order. In view of this, the refund claim was within time and the impugned order rejecting the same as time barred, is not sustainable. The impugned order is set aside and the matter is remanded back to original Adjudicating Authority to consider the refund claim on merits.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

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