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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/834 - 835 / 2009 -SM[BR] Date **23/12/2010**

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

To :
C.C.E. KANPUR

117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant

Vs

M/S RUCHI ORGANICS LTD. UNIT-I, Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 1470 – 1471 / 2010-SM[BR] dated 25.10.2010 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S RUCHI ORGANICS LTD. UNIT-I,
RANIA, KANPUR (DEHAT)

[2] M/S RUCHI ORGANICS LTD. UNIT-II
RANNI , KANPUR [DEHAT]

2. Adv. / Consult
NONE:-------------

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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 - 110005
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 (Harvana)
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

E/Appeal No.834/09, E/835/09

(Arising out of order in appeal No.448/CE/Appl/KNP/08 dated 24.12.08 passed by the Commissioner of Central Excise (Appeals), Kanpur)

Date of Hearing:25.10.2010
Date of Pronouncement:

For approval and signature:

Hon'ble Mrs Archana Wadhwa, 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? No
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.

CCE, Kanpur — Appellants

Vs

1. M/s Ruchi Organics Ltd Unit-I — Respondent
2. M/s Ruchi Organics Ltd Unit-II

Appeared for the Appellant: Shri K.P. Singh, SDR
Appeared for the Respondent: None

Coram: **Hon'ble Mrs Archana Wadhwa ,Member (Judicial)**

Final ORDER 1470-1471/2010 SM (BR)

Per Archana Wadhwa:

Being aggrieved by the order passed by the Commissioner (Appeals), the Revenue has filed the present appeals.

2. I have heard Shri K.P. Singh, learned SDR for the appellants and nobody appeared for the Respondents despite issue of notice.

3. As per facts on record, investigations were conducted by the DGCEI and during the course of such investigation, respondents deposited an amount of Rs.16.50 lakhs. However, subsequently, DGCEI closed the investigation against the respondent. As a result, the respondents filed claim for refund of Rs. 16.50 lakhs deposited by them during the course of investigation. Such claim was filed by them on 18.6.2008.

4. The original adjudicating authority vide his order dated 17.9.08 sanctioned the said refund claim. For better appreciation, the relevant paragragh 2 of the order of the Commissioner is reproduced below:-

"The claim has been scrutinized and observed that this refund arose due to debit of the amount by the party in the month of March, 2007 through PLA during investigation undertaken by DGCEI and not against any confirmed dues assessed amount of duty. The genuineness of the rebate claims and the debit particulars were got verified from the jurisdictional Range Superintendent. In the admissibility report dated 1.9.2008, after checking all relevant documents, the Range Superintendent has verified the claim amount and found correct. The Range Superintendent has categorically stated that the refund is admissible and no unstayed Government dues are pending against the party. I find that a show cause notice F No. DGCEI/KRU/INT/37/06/767-770 dated 7.9.07 demanding duty amounting to Rs. 21,758/- was issued by Deputy Commissioner, Director, DGCEI Regional Unit Kanpur. The party vide letter dated 5.9.08 has informed that the amount of duty to the tune of Rs. 21,758/- demanded has been deposited vide TR-6 No.4 dated 5.9.08 in the State Bak of India, Industrial estate Branch, Kanpur. Thus, I

find that no amount of confirmed dues are pending recovery against the party. Since the refund amount was debited by the party during the investigation of the case and not against any confirmed duty, so there is no question of passing on the duty incidence to the other person and therefore, question of unjust enrichment does not arise. Therefore, I find that Rs. 16.50 lakhs is refundable to M/s Ruchi Organics (Init I) Rania, Kanpur (Dehat)."

5. The respondent filed an appeal against the order before the Commissioner (Appeals) for grant of interest. By taking note of various decisions, the Commissioner (Appeals) held that interest at the rate of 6% should be granted to the assessee from the date of deposit till the date of sanction of the refund claim. The said order is impugned before the Tribunal.

6. The Revenue's contention is that provision for grant of interest are contained in Section 11BB of Central Excise Act providing payment of interest after expiry of three months from the date of receipt of claim ~~expiry~~ till the refund of such duty. In as much as, the refund was filed on 18.6.08 and was sanctioned by the Assistant Commissioner on 17.9.08 i.e. within the period of three moths, there was no question of any interest. They have also relied upon the Tribunal's decision in the case of Laxmi Board & Paper Mills Ltd Vs CCE, Mumbai reported in 2007 (208) ELT 384. laying ~~Relying~~ that interest, if any, on refund of amount deposited during investigation is to be given only after expiry of three months from the date of receipt of the refund application. Revenue has also relied upon Punjab & Haryana High Court judgment in the case of Gee Kay International Vs UOI reported in 2008 (203)

ELT 590 (P&H) and in the case of Raghu Exports Vs UOI reported in 2008 (209) ELT 655 (P&H).

7. After considering the submissions made by the learned DR and after going through the impugned order, I find that the Assistant Commissioner simply granted the refund without taking a decision on the issue of payment of interest. As is clear from the relevant paragraph extracted above, the disputed issue of payment of interest was not subject matter of the order of the Assistant Commissioner. It is not clear as to whether the same was claimed by the assessee at the time of filing of refund claim or not. In any case, the relevant provisions of law have not been discussed by the Assistant Commissioner and his views on the disputed issues, being not available, the first time adjudication by the Commissioner (Appeals) on the disputed issue was not justified.

8. In view of the above, I set aside the impugned order and remand the matter to the original adjudicating authority for examining the aspects of payment of interest to the assessee in the light of the provision of Section 11-BB as also in the light of the law declared by judicial and quasi-judicial authorities. The appeal is thus allowed by way of remand.

(Order pronounced on

(ARCHANA WADHWA)
Judicial Member

MPS*