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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/802 /2009 – SM[BR] E/ CO / 169 / 2009-SM Date **24/12/2010**

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

To :
C.C.E. NOIDA

C-56/42, SECTOR-62, NOIDA-201307

C.C.E. NOIDA Appellant

Vs

M/S KOHINOOR ENTERPRISES Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1480 / 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 KOHINOOR ENTERPRISES
A-62, SECTOR-6, NOIDA,
G.B.NAGAR(UP)
2. Adv. / Consult SHRI R.C. VACHHER ADV.
113 NAVJEEVAN VIHAR
NEW DELHI-17.
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 (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)

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

E/Appeal No.802/09,E/CO 169/09-SM

(Arising out of order in appeal No.169/CE/Appl/Noida/08 dated 23.12.2008 passed by the Commissioner of Central Excise (Appeals), Noida)

Date of Hearing: 25.10.2010

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, Noida — Appellants

Vs

M/s Kohinoor Enterprises — Respondent

Appeared for the Appellant: Shri S.K. Bhaskar, DR
Appeared for the Respondent: Shri R.C. Vachher, Advocate

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

Final ORDER - 1480/2010 SM (BR)

Per Archana Wadhwa:

Being aggrieved by the order of Commissioner (Appeals), the Revenue has filed the present appeal.

2. I have heard Shri S.K. Bhaskar, learned DR for the appellant and Shri R.C. Vachher, learned Advocate for the respondent.

3. The brief facts of the case are that the respondents are engaged in the manufacture of Home furnishings falling under Chapter 94 of the Central Excise Tariff Act, 1985. The respondents filed a refund claim for Rs. 2,77,015/- with the adjudicating authority in accordance with the provision of Rule 5 of the Cenvat Credit Rules, 2004 for refund of unutilized cenvat credit availed by him on inputs/input services during the period from 1.6.04 to 16.6.04 used in the manufacture of finished goods which were exported under the relevant Bills of Lading dated 10.7.04 to 19.7.04. The adjudicating authority vide his above order dated 19.6.08 sanctioned the cash refund of Rs. 2,77,015/- to the respondents.

4. Aggrieved with the said refund claim, Revenue filed appeal before the Commissioner (Appeals) on the ground that the refund was hit by limitation of ~~for~~ one year in as much as, the cenvat credit was availed during the period 1.6.04 to 16.6.04 whereas the claim was filed by the respondents on 13.9.05.

5. The assessee contended before the Commissioner (Appeals) that 13.9.05 was a typographical error whereas the refund claim was actually filed with the jurisdiction Deputy Commissioner on 31.12.2004. Vide is office letter dated 13.1.05, the Deputy Commissioner directed the respondents to resubmit the claim alongwith the relevant documents. Such claim was submitted by them on 28.2.05 in the Range office after removing the objection raised by the Deputy Commissioner. As such, they contended that original claim

filed on 31.12.2004 was within limitation period even the resubmitted claim was filed on 28.2.2005 whereas even according to the Revenue, the last date of filing claim was 30.6.05.

6. The Appellate Authority by conceding the pleas of the assessee, rejected the Revenue's appeal by observing as under:-

"In the above context, I have perused the copy of relevant refund application dated 31.12.2004 for Rs.2,77,015/-as produced by the respondents and find that the same was duly acknowledged by the office of the Deputy Commissioner, Central Excise, Division III Noida on the same date i.e. 31.12.2004. Besides I have perused the copy of the letter C No. V(18)Ref/Inst/N.III/632/04/296 dated 13.1.2005 of the Deputy Commissioner, Central Excise Division III, Ghaziabad vide which the respondents were required to resubmit their above refund application alongwith the certain documents viz final proof of shipment of goods/certificate by the customs authorities on the back of ARE-I. The claim alongwith requisite documents as aforesaid was resubmitted to the Deputy Commissioner by the respondents vide their letter dated 28.2.2005. The perusal of the Deputy Commissioner's above letter dated 13.1.05 and the respondent's letter dated 28.2.05 (acknowledged by the department on 9.3.05) reveal that date of receipt of the said refund claim is 31.12.04. Further with regard to the said refund claim of Rs. 2,77,015/-, the table given in the said letter dated 13.1.05 of the Deputy Commissioner, Central Excise Division III Noida clearly mentions date of receiving to this office 31.12.04. These facts lead to the conclusion that the actual date of filing the refund claim is 31.12.04 and accordingly, the same has been filed by the

respondents well within the stipulated period of one year under Section 11B of Central Excise Act, 1944. Thus it may be mentioned that the date of filing of the refund claim as indicated in para 1 and para 2 of the order in original No. 124/Ref/N.III/08-09 dated 19.6.08 (vide which the instant refund claim was sanctioned) i.e. 13.9.05 is nothing but a typographical error, as contended by the appellants. Further in the discussion and findings part of the order in original, the adjudicating authority has specifically recorded that the claim has been filed within time limit of one year as prescribed under Section 11B of the Central Excise Act, 1944 and the claim has been found admissible in other respects."

7. The said order of the commissioner (Appeals) is impugned before the Tribunal.

8. After hearing both the sides and after going through the grounds of appeal raised by the revenue, it is seen that there is no dispute that the original refund claim was filed by the assessee on 31.12.2004 and subsequently resubmitted on 28.2.05. It is the Revenue's contention that the said refund claim was filed with the Superintendent and was received by the Deputy Commissioner on 30.9.05. It is their contention that the date of receipt of the refund in the office of Deputy Commissioner should be taken into consideration. That the Revenue accepts that the original refund claim was filed in the Division office on 30.1.04 but their contention is that the same only bears initial of some person without any mention of name or designation of the said person nor it has stamp of Division office. As such, they cannot be held that the refund claim bears the acknowledgment of the Division.

9. I find no merits in the above contention. The letter dated 13.1.05 written by Deputy Commissioner requiring the respondents to resubmit refund application alongwith relevant documents is not being doubted by the revenue in the Memo of appeal. The said letter refers to refund claimed on 13.1.04. If that be so, the genuineness of the refund claim filed on 13.1.04 cannot be doubted and the fact that the same bears the official stamp or signatures or only official receiving the same is irrelevant. No merits are found in the Revenue's appeal. The same is accordingly rejected.

(ARCHANA WADHWA)
Judicial Member

MPS*