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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/7 /2008 – SM[BR] Date 27/08/2010

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant
Vs
M/S ALSTOM LTD. (NOW AREVA T & D LTD.) Respondent

I am directed to transmit herewith a certified copy of **Final order** No.910 / 2010 –SM[BR] dated 24.8.2010 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 ALSTOM LTD. (NOW AREVA T & D LTD.)
   NAINI, ALLAHABAD, U.P.
2. Adv. / Consult
   NONE;--------------

3 S.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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision:24.8.2010

Central Excise Appeal No.07 of 2008-SM

Arising out of the order in appeal No.173-CE/ALLD/2007 dated 24.9.07 passed by Commissioner (Appeals), Customs & Central Excise, Allahabad.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter 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 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

C.C.& C.Ex., Allahabad ... Appellant

Vs.

M/s Alstom Ltd. ... Respondent

Appearance:

Shri S.K. Bhaskar, Authorized Departmental Representative (JDR) for the Revenue and none for the respondents

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No. 910/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 173-CE/ALLD/2007 dated 24.9.07, by which the order of the original authority dated 29.5.06 sanctioning refund of Rs.46,400/- by way of credit into RG-23A Part II account was upheld.

2. None appears for the respondents in spite of notice. Heard the learned DR.

3. The relevant facts, in brief, are that on 2.4.2002, the officers intercepted a consignment valued at Rs.2,90,000/- on the reasonable belief that the said consignment has not discharged the duty liability. The claim of the party was that it was a part of the consignment earlier cleared on payment of duty vide invoice No.10378 dated 31.1.02. The seized goods were provisionally released and the provisionally released goods were cleared on 25.4.02 again on payment of duty of Rs.46,400/-. The Joint Commissioner of Central Excise who adjudicated the dispute vide order dated 29.12.2003 upheld the claim of the party that the consignment has discharged the duty liability under invoice dated 31.1.02.

4. Subsequently, after receipt of the order of the Joint Commissioner, the party filed refund claim on 27.4.04 which was granted by the original authority as a consequential relief in pursuance of the order of the Joint Commissioner. The Department felt that the claim has to be rejected as time barred and filed appeal before the Commissioner (Appeals) and the Commissioner (Appeals) did not interfere with the order of the original authority.

5. Learned DR submits that the duty was paid for the second time on 25.4.02 and the claim having made on 27.4.04 is clearly time barred. He relies on the decision of the Tribunal in the case of C.C.E., Mumbai vs. Sairaj Industries reported in 2004 (169) ELT 79 and submits that the claim should have been made within time limit prescribed under Section 11B and the stand of the authorities below in treating this claim as consequential refund is not justified.

6. I have carefully considered the submissions from both sides and perused record. The original authority has treated the claim as consequent to the favourable order passed by the Joint Commissioner. In other words, the

goods which were seized were held to have been duty paid in January 2002. The seizure has been held not legal and the goods were not confiscated. Therefore, the payment of duty at the time of clearance after provisional release is only at the instance of the Department and consequent to seizure and provisional release which has been held not legal by the order of the Joint Commissioner dated 29.12.2003. Undisputedly, the said order of the Joint Commissioner stands accepted by the Department and no appeal against the same has been filed before the Commissioner (Appeals).

Under these circumstances, the refund is clearly a consequential relief as held by the original authority and upheld by the Commissioner (Appeals). The facts of the present case are distinguishable from the facts of the case relied upon by the learned DR.

7. I do not find any valid reason to interfere with the concurrent findings of the authorities below. The appeal filed by the Department is, therefore, rejected.

(M. Veeraiyan)
Technical Member

scd/