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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/2631 - 2632/2008 – SM[BR] Date 10/11/2010

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

To :
M/S STAR DELTA TRANSFORMERS LTD.
92-A, INDUSTRIAL ESTATE, GOVINDPURA, BHOPAL
(M.P.)

M/S STAR DELTA TRANSFORMERS LTD. Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1208 – 1209 / 2010-SM[BR] dated 21.10.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent
   C.C.E BHOPAL
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult SHRI V.LAKSMIKUMARN ADV.
   B-6/10, SAFDARJUING ENCLAVE NEW DELHI

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)

3. M/S BHOPAL WIRES PVT. LTD.
PLOT NO. 7, SECTOR-1, INDUSTRIAL AREA, GOVINDPURA,
BHOPAL (M.P.)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI**
**PRINCIPAL BENCH, COURT NO. IV**

**Excise Appeal No. 2631-2632 of 2008-SM(BR)**

[Arising out of Order-in-Appeal No. 158, 159/BPL /2008 dated 18.9.2008 passed by the Commissioner of Customs & Central Excise (Appeals ), Bhopal.]

**For approval and signature**:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

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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 should 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 Departmental authorities? :

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M/s. Star Delta Transformers Ltd. — Appellants
M/s. Bhopal Wires Pvt. Ltd.

Vs.

Commissioner of Central Excise — Respondent
Bhopal

**Appearance**: Shri Atul Gupta, Advocate for the Appellants
Shri R.K. Gupta, SDR for the Respondent

Date of Hearing/decision : 21.10.2010

Final **ORAL ORDER NO. 1208-1209/2010 SM(BR)**

**Per Ashok Jindal**:

The appellants have filed these appeals for denial of refund claim on the ground that refund claim is barred by limitation. The facts of the cases are that the appellants were supplier of electrical transformers as per their contract which has escalation clause. Accordingly, they raised invoices at the time of supply of goods, later on due to price variation (according to escalation clause) they issued supplementary invoices and paid duty thereon. Later on, while making the payment, their supplier deducted some amount from their supplementary invoices. The appellants are seeking refund of duty on the amount deducted by the buyers on supplementary invoices. The lower authorities rejected the refund claim holding that the appellants have filed the refund claim beyond one year of issue of their supplementary invoices. Aggrieved from such denial of refund claim, the appellants are before the Tribunal.

2. The learned advocate appearing on behalf of the appellants submitted that in this case as there was escalation clause in their agreement, and as price was not finalised till they received payment from their buyers, hence the bar of limitation does not applicable to their case. To support his contention, he placed reliance on Ideal Industrial Explosives Ltd. vs. CCE, Hyderabad reported in [2008 (231) ELT 485 (Tri-Bang)].

3. Heard. On careful consideration of the submissions made by the learned advocate, I find that it is a case where the appellants have issued

supplementary invoices on price escalation clause. But their buyer have deducted some amount from the supplementary invoices raised by the appellants and they filed the refund claim for refund of duty due to such deduction of price by the buyers. The contention of the learned advocate is not acceptable, at this stage, that the assessment be treated as provisional because as they have issued invoices initially and they have not ~~paid~~ asked for provisional assessment. When they have issued supplementary invoices, the assessment becomes final at the end of the appellants. The case law relied upon by the learned advocate is on different facts. In fact in that case, on issue of supplementary invoices, prices were reduced and this Tribunal has held in that case that the assessment on the basis of original invoices was deemed to be provisional assessment which is not the case in the matter in hand. As the lower appellate authority has rightly held that the refund claim has been filed beyond period of one year from the date of supplementary invoices is correct view. Accordingly, I do not find any reason to interfere with the same. With these observations, the appeals are rejected.

( Ashok Jindal )
Member(Judicial)

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