

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH N B(SM)

Appeal No. E/469/2000-NB(SM)

Dated : 12/2/2001

CEGAT  
NEW DELHI  
To,

M/s. Rishi Chemicals works (P) Ltd  
NO F-S, to 10, Govt Industrial  
Area, Haridwar-249401 (UP)

In the matter of :

M/s Rishi Chemical works (P) Ltd

Appellant

vs.

CCE Meerut

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/222/01/NB(SM)  
Dated : 7/2/2001.....passed by the Tribunal under Section 35-C(1) of Central Excise  
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

BU  
Asstt. Registrar  
NB(SM)

1. CCE Meerut
2. CCE / CC / (Appeal)
3. Chief Commissioner of Central Excise / Customs.
4. Adv. / Consult. 32. J.S. Agarwal, Adv  
M/s Rishi Chemical works (P) Ltd  
S-187, Greater Kailash  
New Delhi - 48
5. S.D.R -NB(SM)
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003
13. M/s Lex Site Com. Ltd., Mumbai
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Asstt. Registrar NB(SM)

CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL  
NEW DELHI

Appeal No.E/469/2000-NB(SM)

[Arising out of Order-in-Appeal No.641-CE/MRT/99 dated 27.7.99 passed by the Commissioner (Appeals) Customs & Central Excise, Ghaziabad.]

M/s. Rishi Chemcial Works (P) Ltd. Appellants  
(Shri J.S. Agarwal, Advocate)

Vs.

Commissioner of Central Excise, Meerut Respondent  
(Shri M.D. Singh, S.D.R.)

FINAL ORDER NO. A/222/01/ NB CS/m) Dated \_\_\_\_\_

Per. S.S. KANG, MEMBER

Appellants filed this appeal against the order in appeal passed by the Commissioner (Appeals) whereby their refund claim was rejected as time bar.

2. Brief facts of the case are that appellants are engaged in the manufacture of Inorganic Chemicals and were availing the benefit of MODVAT credit in respect of duty paid on inputs used in the manufacture of final product. A show cause notice was issued to the appellant for recovery of Rs.18,240/-. Appellants on 12.10.94 made the entry in their RG-23A Part II in respect of this amount. Thereafter, on asking of the Revenue, they debited the amount of demand in their PLA account also. The adjudicating authority imposed a penalty of Rs.5,000/- on the appellants. The appellants challenged this order of imposition of penalty.

and the Commissioner (Appeals) allowed the appeal and set aside the penalty imposed on the appellants.

3. On 8.2.97, appellants filed a refund claim in respect of duty paid through RG-23A Part II on 12.10.94. A show cause notice was issued to the appellants for denial of the refund. The adjudicating authority rejected the refund claim being time barred, As the refund claim was filed beyond the period of six months, from the date of payment of duty, as provided under Section 11B of the Central Excise Act. The appellants filed appeal and the same was rejected.

4. Learned Counsel appearing on behalf of the appellants submits that appellants paid duty twice and in respect to the earlier proceedings, the Assistant Commissioner made a remarks that appellants should make a separate request for refund in respect of duty paid through their RG-23A Part II account. He submits that in this situation, the period of limitation as provided under Section 11B of the Central Excise Act is not applicable. He relies upon the decision of the Tribunal reported in 1996 (64) ECR 322 (Tribunal) in the case of C.C.E., Jamshedpur Vs. Ushal Beltron Ltd.. He, therefore, prays that the appeal be allowed.

4. Learned SDR appearing on behalf of the Revenue submits that as per the provision of Section 11B of the Central

Excise Act, the assessee can file a refund claim within six months from the date of payment of duty. He submits that Hon'ble Supreme Court in the case of Miles India Limited Vs. Assistant Collector of Customs, reported in 1987 (30) E.L.T. 641 (S.C.) and in the case of Collector of Central Excise, Chandigarh Vs. Doaba Co-operative Sugar Mills, reported in 1988 (37) E.L.T. 478 (S.C.) held that the authorities are bound by the period of limitation as provided by the Central Excise Act and the Customs Act. He, therefore, prays that the appeal be dismissed.

5. Heard both sides.

6. In this case admittedly, the duty was paid on 12.10.94 and refund claim was filed on 8.2.97. Therefore, the refund claim was beyond the period of limitation<sup>as</sup> provided under Section 11B of the Central Excise Act. The appellant relied upon the case of C.C.E., Jamshedpur Vs. Usha Beltron Ltd., reported in 1996 (64) ECR 322 (Tribunal). In this case the Tribunal held that where at the time of assessment of duty by a proper officer, it was found that some excess duty was paid by the assessee, the limitation provided under Section 11B is not applicable. The facts of the present case are different. It is not the case of appellants that on assessment by a proper Officer it /was found that some excess duty was paid. The present case is a case where duty was paid twice. The Hon'ble Supreme Court

in the case of Collector of Central Excise Chandigarh Vs. Doaba Co-operative Sugar Mills (Supra) held that the Revenue authorities acting under the Act were bound by the provisions of the Act. In view of the above disussions, I find no merit in the appeal. The appeal filed by the <sup>appellant.</sup> ~~Revenue~~ <sup>Singh</sup> is rejected.

( S.S. KANG )  
MEMBER (JUDICIAL)

Dated : 7.2.2021

/RANA/