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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/278 /2007 - CU[DB] Date **17/01/2011**

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

To :
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW DELHI 110037.

C.C. NEW DELHI (IMPORT & GENERAL) Appellant

Vs

M/S RAJASTHAN ANTIBIOTIC LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order C/26/ 2011 CU[DB]** dated 13.01.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S RAJASTHAN ANTIBIOTIC LTD.
PLOT NO.2, HSIDC, INDUSTRIAL ESTATE,
SECTOR-18, UDYOG VIHAR, GURGAON,
HARYANA-122001.

2. Adv. / Consult

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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 12/01/2011.
DATE OF DECISION : 12/01/2011.

Customs Appeal No. 278 of 2007

[Arising out of the Order-in-Appeal No. CC (A)/04/ACU/D-I/2007 dated 12/01/2007 passed by The Commissioner of Customs (I&G), New Delhi.]

For Approval and signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri M. Veeraiyan, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2.	Whether it would 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 Department Authorities?	:	Yes

CC (I&G), New Delhi Appellants

Versus

M/s Rajasthan Antibiotic Ltd. Respondent

Appearance

Shri Amrish Jain, Authorized Representative (DR) – for the Appellants.

None – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri M. Veeraiyan, Member (Technical)

Final Order No. C/26/11 Dated : 13.1.11

Per. Archana Wadhwa :-

Being aggrieved with the order passed by Commissioner (Appeals) the Revenue has filed the present appeal. Nobody appeared on behalf of the respondent, Accordingly we have heard learned SDR and have gone through the impugned order.

2. Commissioner (Appeals) vide his impugned order has granted refund of excess duty paid by the respondents at the time of import of the life saving antibiotic bulk drugs. Such refund claim was filed by the appellant after the period of six months as provided in Section 27 of the Customs Act, 1962. The Appellate Authority has held that where duty charged is without any authority of law, the limitation provided under the Act is not applicable. He has accordingly held that such excess collected duty is to be refunded to the assessee.

3. Revenue has challenged the said orders on two grounds, first that the limitation as provided under Section 27 of the Customs Act is applicable to the refund claims and the authorities have no jurisdiction to enhance the said time period. For the above proposition reliance is placed upon Hon'ble Calcutta High Court judgment in the case of **Inchek Tyre Limited vs. Assistant Collector of Customs and others** reported in **1979 (4) E.L.T. (J 236) (Cal.)**. Further it stands contended by the learned SDR that the assessment order was never put to challenge and as per the law declared by the Hon'ble Supreme

Court in the case of **Priya Blue Industries Ltd. vs. CC (Preventive)** reported in **2004 (172) E.L.T. 145 (S.C.)**, the refund claim contrary to the assessment order, which assessment order has not been put to challenge, cannot be entertained.

4. We find force in both the above contentions of the learned SDR. The Revenue authorities are bound by the law laid down in Section 27 of the Customs Act and cannot exceed their jurisdiction to grant refund even ~~without~~ when the same stands filed after the period of limitation, irrespective of the fact that whether the same is otherwise admissible on merits or not. Similarly, the law as regards filing of refund claim without putting the assessment order to challenge stand settled by the above referred judgment of the Hon'ble Supreme Court in the case of **Priya Blue Industries Ltd. vs. CC (Preventive)** (supra).

5. In view of the above, we set aside the impugned order of Commissioner (Appeals) and allow the appeal filed by the Department.

(Dictated and pronounced in open court.)

(Archana Wadhwa)
Member (Judicial)

(M. Veeraiyan)
Member (Technical)

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