

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2013/2005 - EX[DB]

Date **03/06/2011**

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

To :
THE KESAT ENTERPRISES LTD.
BEHERI DISTT BAREILLY- U.P
THE KESAT ENTERPRISES LTD.

Appellant
Vs
Respondent

C.C.E.MEERUT-II

I am directed to transmit herewith a certified copy of **Final order No.452/ 2011 EX[DB]** dated 20-4-11
passed by the Tribunal under **Section 35-C(1) of Central Excises Act, 1944**


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E.MEERUT-II
UNIVERSITY ROAD MANGAL
PANDAY NAGAR MEERUT U.P

2. Adv. / Consult

MR.KAPIL VAISH

B-51, BUTLER PLAZA, 95, CIVIL LINES, BAREILLY.

3. C.D.R

4. Bar association. CESTAT. New Delhi

5. Director Publications. Customs. Excise. I.P. Estate. New Delhi

6. M/s Centax Publications 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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005

9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

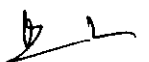
10. LAWCRUX Advisors Pvt Ltd, LAW House.1-8, Sector - 10, Faridabad 121003 (Harvana)

11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Guard file

14. HON'BLE PRESIDENT.


Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-I

Date of hearing/decision: 20.04.2011

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President

Hon'ble Shri Rakesh Kumar, 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.	
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?	

Excise Appeal No. 2013 of 2005

[Arising out of Order in Appeal No. 239-240-CE/MRT-II/2004 dated 11.10.2004 passed by the Commissioner (Appeals), Central Excise, Meerut-II].

The Kesar Enterprises Limited

Appellants
[None]

Vs.

CCE, Meerut-II

Respondent
[Rep. by Ms. Monica Batra, DR]

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President

Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Oral Order No. 452/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

None present for the appellants though served. Heard the DR for the respondents.

2. We have heard the DR and perused the entire record. The present appeal arises from order dated 11.10.2004 passed by the Commissioner (Appeals) Meerut. By the impugned order, the appeal filed by the appellants against the order passed by the adjudicating authority has been dismissed. The adjudicating authority by order dated 22.11.2002 had rejected the claim for payment of interest on the refund amount of Rs. 12,97,747/- which was ordered to be refunded to the appellants under order dated 19.07.2001.

3. The appellants are engaged in manufacture of cane sugar and molasses falling under chapter heading No. 1701 and 1703 in their sugar factory as also ethyl alcohol, fusel oil, India Made Foreign Liquor and Country Liquor in their distillery unit. During the surprise visits by the Central Excise Officers to the factory of the appellants, it was noticed that the appellants had been reversing an amount equivalent to 8% of the value of Indian Made Foreign Liquor manufactured and cleared by them and thereby contravening the provisions of Rule 57A and 57CC of the erstwhile Central Excise Rules, 1944. In the proceedings which followed, the demand to the tune of Rs. 1176828/- for the period from May 1998 to May 1999 was confirmed alongwith the interest thereon. In the appeal carried out against the said order before the Commissioner (Appeals) which came to be disposed of by his order dated 27.03.2000. The matter was then carried in appeal before the Tribunal and by order dated 14.08.2000 the Tribunal also reduced the penalty to Rs. 50000/- and held that since the India Made Foreign Liquor is not excisable product nor a final product and the Rule 57CC relates to the final product as exempt or chargeable to Nil rate of duty it covered only excisable product and not the non-excisable product and it

was applicable to rectified spirit, therefore, an amount of 8% of the value of the rectified spirit was reversible. Consequently, the appellants filed refund claim for Rs. 12,97,747/- under letter dated 3.05.2011 which was received in the office of the Deputy Commissioner, Bareilly on 08.05.2011. The refund claim of the appellants was thereafter allowed by the Deputy Commissioner under order dated 19.07.2011.

4. The appellants under letter dated 10.10.2001 made a claim for interest on the amount refunded. The Deputy Commissioner under order dated 22.11.2002 rejected the appellants claim for interest on the refunded amount. Aggrieved by the same, the matter was carried before the Commissioner (Appeals) which came to be dismissed by the impugned order. The Commissioner (Appeals) has rejected the claim essentially on two grounds. Firstly, that the refund amount was not an amount relating to the central excise duty as such and, therefore, question of payment of interest does not arise. Secondly, in case the amount is said to be excise duty then certainly the principle of unjust enrichment would be attracted. However, in the case in hand, the said principle had not been applied to the relevant observations in that regard in the impugned order reads thus:-

“However, on examination, I find that the issue is not the above at all. The main issue that is to be decided, is whether the amount refunded can at all be treated as duty under Central Excise Act, so as to make them eligible for claiming interest under the provisions of the Central Excise Act. The adjudicating authority has very clearly recorded that it was the refund of the amount paid under erstwhile rule 57CC, which was not Central Excise duty. He has also relied on the order of his predecessor dt. 19.7.2011 which had actually sanctioned the refund in which the clause of unjust enrichment, which would have otherwise been invoked, was not invoked on the ground that this being a refund under Rule 57CC which is not a payment of Central Excise duty there

was no question of duty burden to be passed on to any other persons and hence the provision of unjust enrichment was not invoked at all”.

5. The DR submitted that considering the provisions of Rule 57CC of the erstwhile Central Excise Rules, 1944 it cannot be said that the refund of the amount paid in terms of the said provision of law cannot be equated with the refund of the Central Excise duty and, therefore, question of payment of interest does not arise. She has drawn our attention to the decision of the Tribunal in the matter of **Pushpaman Forgings vs. CCE, Mumbai-VII** reported in 2002 (149) ELT 490 (Tri.) **Pure Helium (India) Ltd. vs. CCE, Mumbai-III** reported in 2004 (163) ELT 122 (Tri.).

6. On perusal of the entire record and upon hearing the DR, it is apparent that only issue which arise for consideration in the matter is whether the appellants are entitled for grant of interest on the amount of Rs. 1297747/- refunded to the appellants in terms of provisions of law comprised under Rule 57CC. The said rule read as under:-

“Where a manufacturer is engaged in the manufacture of any final product which is chargeable to duty as well as in any other final product which is exempt from the whole of the duty of the excise leviable thereon or is chargeable to nil rate of duty and the manufacturer takes credit of the specified duty on any inputs (other than inputs used as fuel) which is used or ordinarily used in or in relation to the manufacture of both the aforesaid categories of final products, whether directly or indirectly and whether contained in the said final product or not, the manufacturer shall, unless provisions of sub rule 9 are complied with, pay an amount equal to 8% of the price (excluding Sales tax & other taxes, if any, payable on such goods) of the second category of final product charged by the manufacturer for the sale of such goods at the time of their clearance from the factory”.

7. Perusal of the above provision of law clearly discloses that the payment is related to an amount equal to 8% of the price of the goods. It does not relate to the payment of duty as such. Even assuming that a

manufacturer is made to pay certain amount for availing the benefit of exemption from payment of duty that itself cannot amount to categorized such payment as duty under the said Act. Besides, as rightly observed by the authorities below in case of refund of duty amount, the statutory provisions as well as judicial pronouncement clearly makes it obligatory for the statutory authorities to ensure that such refund does not result in unjust enrichment to the claimant. Being so, in case of refund of duty, the authority has to ascertain whether the burden of the duty has been passed on to the consumer. As far as the refund in relation to Rule 57CC is concerned certainly this principle is not invocable and, therefore, question of considering the amount payable in terms thereof cannot be construed as refund of duty.

8. Once the refund to be made by the authority is considered as not amounting to refund of duty, there being no provision under the statute which would authorize authorities to grant interest on such amount, the question of entertaining the claim for interest by the department at the instance of the appellants in relation to the refund availed under Rule 57CC cannot arise. The authorities are governed by the statutory provisions. Whether the appellants have any claim for interest under general law or not is a totally different issue and the same cannot be gone into either by the authorities below or by this Tribunal. There is a totally independent forum to decide about the same.

9. As regards the contention that there was delay in refunding the amount, the same also does not appear to be correct. The letter dated

03.05.2011 was received by the officer on 08.05.2011 and the refund was ordered on 19.07.2001. It is true that the appellants had approached the authority earlier under letter dated 06.01.2001. However, the same was responded to under letter dated 18.04.2001 for proper application for refund and indeed the appellants preferred such application on 03.05.2011. In other words, the appellants clearly admitted the fact that there was a need for appropriate application under Section 11BB of the Act to claim refund and it was accordingly filed by the appellants on 03.05.2001. Consequently, the refund was granted on 19.07.2011 within a period of three months from the date of the said application.

10. In **Pushpaman Forgings** while relying upon the decision in **Eternit Everest Ltd. vs. UOI** reported in 1997 (89) ELT 28 (Mad.) it was held that 8% of the sale price of the product demanded under Rule 57CC is not the duty amount. Similar was the decision of the Tribunal in **Pure Helium (India)** case.

11. In the facts and circumstances of the case, therefore, we do not find any case having been made out for interference in the concurrent findings arrived at by the authorities below and hence appeal fails and is hereby dismissed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

/Pant/