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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Appeal No. E/2150/2005 - EX[DB] Date **10/06/2011**

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

To :
M/S UNIVERSAL MAGNOFLUX (P) LTD
24, OLD PALASIA, A.B.ROAD, INDORE
452001

M/S UNIVERSAL MAGNOFLUX (P) LTD Appellant

Vs

C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.464/ 2011 EX|DB|** dated 31-5-11 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. INDORE
MANIK BAGH PALACE, POST
BOX NO. 10, INDORE 452001 (M.P.)

2. Adv. / Consult
MR.JAIDEEP WADGE
10, BAIRATHI COLONY NO.1, P.O. PAGNISPAGA, INDORE, M.P. 452007

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
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. 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

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.II

E/Appeal No.2150/2005

(Arising out of order in appeal No.IND.1/29/05 dated 28.2.05 passed by the Commissioner of Central Excise (Appeals),Indore)

Date of Hearing: 3.5.2011

For Approval and signature:

Hon'ble Mr D.N. Panda, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the 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 Department Authorities?	Yes

M/s Universal Magnoflux (P) Ltd — Appellants

Vs

CCE, Indore — Respondent

Appeared for the Appellant: None
Appeared for the Respondent: Shri B.K. Singh, Jt.CDR

Coram: **Hon'ble Mr D.N. Panda, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

FINAL ORDER NO. 464/2011 – EX.

Per D.N. Panda:

None present for the appellant.

2. The Appellant made a claim of refund on 6.9.2004 to the tune of Rs. 17,07,888/-. Record does not reveal that they have made claim with necessary evidence of eligibility to claim and there was no unjust enrichment, before the adjudicating authority itself to satisfy him that firstly they are eligible to the refund and such eligibility arose on a particular date. The appellants claimed benefit of exemption under Notification No. 108/95-CE dated 20.8.1995 as amended by Notification No. 04/99-CE dated 11.2.99. It is their contention that the supplies were made to a project funded by the World Bank upto 31.12.2000. Since the supplies were made after this date, the appellant cleared goods on payment of duty. Later the Government of India clarified vide letter dated 30.7.2003 that the exemption will apply to supplies made after 31.12.2000 also if the order for supply was placed before 31.12.2000. Based on this letter of Government of India, the appellant filed refund claim on 6.9.2004 for duties paid during November 2001 to January, 2002.

3. The adjudicating authority brings out the claim of assessee stating the fact that they made claim in terms of Notification No. 108/95. They approached the authority by letter No.21592 dated 20.10.2003 and No.22167 dated 19.4.2004. Such refund was

refused by letter dated 2.7.2004 on the ground that the refund was barred by limitation. There is no whisper in the pleading of the appellant in the present appeal as to whether they have sought remedy against such orders denying refund. The adjudicating authority also did not state whether there was eligibility to the refund and if so, from which date.

4. The main pleading of the appellant as per Appeal Memo is that the relevant date from which time limit is to be counted is 30.7.2003 that is the date on which Ministry issued the clarification. For this, they rely on clause (ea) of Explanation B in sub-section (5) of Section 11B of Central Excise Act.

5. Learned Jt. CDR submits that when the relevant date pertains to the period November, 2001 to January 2002 and the same is barred by limitation, the first appellate authority has made a correct observation. The learned Jt. CDR points out clause (ea) of Explanation B of sub-section (5) of Section 11B of Central Excise Act, defining relevant date for deciding time limit for filing refund application, applies only in cases of exemption issued under sub-section (2) of Section 5A of the Central Excise Act. In this case, the refund claim is based on Notification No. 108/95-CE issued under Sub-section (1) of Section 5-A and hence the provision of clause (f) of Explanation B of sub-section (5) of Section 11B shall apply. Hence the claim is time barred and the appeal is liable to be dismissed.

6. We find that the submission of learned Jt CDR is legally

correct and there is no reason to keep the appeal pending. Further in this case refund is claimed without challenging the assessment. Therefore, the ratio laid down by the Apex Court in the case of CCE Kanpur Vs Flock (India) Pvt Ltd is applicable and the refund claim is not maintainable for this reason also.

7. Therefore, we dismiss the appeal with the aforesaid observations.

(Order dictated and pronounced in the open Court).

(D.N. PANDA)
Member Judicial

(MATHEW JOHN)
Member Technical

MPS*