TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Appeal No. E/2693/2010 - EX[DB] WITH E/M/264/2011-EX Date **05/08/2011**

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

To :
C.C.E. GHAZIABAD

C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR,
GHAZIABAD 201302

C.C.E. GHAZIABAD Appellant

Vs

M/S SWADESHI POLYPTEX LTD., **MISC ORDER NO. 420/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.690/ 2011 EX|DB|** dated 29-7-11

passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S SWADESHI POLYPTEX LTD.,
KAVI NAGAR INDUSTRIAL AREA,
GHAZIABAD. (U.P.)

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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 (Haryana)
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:29.7.2011

Misc.Application No.264 of 2011
Central Excise Appeal No.2693 of 2010

C.C.E., Ghaziabad .. Appellants

Vs.

M/s Swadeshi Polytex Ltd. .. Respondent

Appearance:

Shri N.Pathak, Authorised Departmental Representative (DR) for the Revenue
Shri B.L. Narasimhan, Advocate for the respondents.

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Raksh Kumar, Technical Member

Misc Oral Order No. 420/2011 - EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the DR for the appellants and the Advocate for the respondents. By consent, the application is allowed and the appeal directed to be listed for final hearing forthwith. Application stands disposed of.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing/decision:29.07 .2011

Central Excise Appeal No.2693 of 2010

Arising out of the order in appeal No.67-CE/GZB/2010 dated 30.4.2010 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Ghaziabad.

For Approval and Signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 of 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 Departmental authorities?	Yes

C.C.E., Ghaziabad .. Appellant

Vs.

Swadeshi Polytex Ltd. .... Respondents

Appearance:

Shri N. Pathak, Authorized Departmental Representative (DR) for the Revenue
Shri B.L. Narasimhan, Advocate for the respondents

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL Oral Order No. 690/2011 - EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the DR for the appellant and the Advocate for the respondents. Though the present appeal arises from the order dated

30.4.2010 passed by the Commissioner (Appeals), Ghaziabad, the Commissioner (Appeals) has allowed the appeal and remanded the matter to pass a fresh order taking into consideration the point of limitation as well as the principle of unjust enrichment. By order dated 23.10.2009, the Deputy Commissioner , Ghaziabad had rejected the application filed by the respondents for refund of the amount of Rs.1,11,11,941.24 paise relating to the period from May 1986 to June, 1990.

2. Though the impugned order is sought to be challenged on various grounds, it is not necessary to refer to all those grounds and suffice to refer to only one ground namely the lack of jurisdiction of the Commissioner (Appeals) to remand the matter. It is well settled law that the Commissioner (Appeals) has no power to remand the matter and in case any infirmity is found in the order passed by the adjudicating authority, the Commissioner (Appeals) himself has to call upon the order and to pass appropriate order. Considering the same, the impugned order cannot be sustained.

3. Having observed as above, the fact however, remains that while deciding the claim of refund certainly, the authority has to take into consideration the applicability of the principle of unjust enrichment as well as the point relating to the bar of limitation. Once it is apparent that all these were not properly appreciated by the adjudicating authority, in our considered opinion, it would be appropriate to send the matter to the adjudicating authority to deal with the said issues. Being so, though we are inclined to set aside the impugned order on the ground of lack of jurisdiction of the Commissioner (Appeals) to remand the matter yet while setting aside the said order, we remand the matter to the adjudicating authority to deal with the above issues in accordance with the provisions of law. Needless to say that the adjudicating authority will have to consider

the case de novo in accordance with the provisions of law including the issues as stated above. Accordingly, the impugned order is set aside and the matter is remanded to the adjudicating authority to decide the claim of refund afresh in accordance with the provisions of law.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/