TELEGRAM : CEGCANAL
Websi● 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/2166/2005 - EX[DB]   Date 09/08/2011

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

To :
C.C.E.ROHTAK

UDYOG MINAR VANIJYA NIKUNJ UDYOG
VIHAR,PHASE-V,GURGAON

C.C.E.ROHTAK — Appellant

Vs

M/S SURYA ROSHNI LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.713/ 2011 EX[DB]** dated 26-7-11 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 SURYA ROSHNI LTD.
PRAKASH NAGAR
BAHADURGARH

2. Adv. / Consult
MR.R.S. SHARMA, ADV.,
C-9/9656, VASANT KUNJ, NEW DELHI 110070

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)

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. I

DATE OF HEARING : 26/07/2011.
DATE OF DECISION : 26/07/2011.

Excise Appeal No. 2166 of 2005

[Arising out of the Order-in-Appeal No. 131/AKG/RTK/2005 dated 18/03/2005 passed by The Commissioner of Central Excise (Appeals), Delhi – III, Gurgaon.]

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?	: 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

CCE, Rohtak — Appellants

Versus

M/s Surya Roshni Ltd. — Respondent

Appearance

Shri B.K. Singh, Authorized Representative (Jt. CDR) – for the Appellants.

Shri R.S. Sharma, Advocate – for the respondent.

CORAM : **Hon'ble Shri Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. 713/2011 – EX Dated : 26/07/2011

Per. Shri Justice R.M.S. Khandeparkar :-

This appeal arises from order dated 18^{th} March 2005 passed by Commissioner (Appeals), Gurgaon and by the impugned order, the Commissioner (Appeals) rejected the appeal filed by the department against the order passed by the Adjudicating Authority. The Assistant Commissioner, Rohtak, by his order dated 1^{st} June 2000 had allowed the application filed by the respondent for refund of Rs. 2,42,517/- while rejecting the claim of the department about unjust enrichment to the respondent.

2. The only issue which arises for consideration in the matter is whether pursuant to issuance of credit notes by the respondent in favour of the buyers, which credit notes were according to the respondent equivalent the amount which was allegedly overcharged as duty element, would result in discharging the burden of proving that the corresponding duty element was not passed on to the buyer.

3. We have heard Jt. CDR for the appellant and the advocate for the respondent. The Jt. CDR while placing reliance in the decisions in the matters of **Sanga, Processors (Bhilwara) Ltd. vs. CCE, Jaipur** reported in **1994 (71) E.L.T. 989 (Tribunal), Rajasthan**

Spinning & Weaving Ltd. vs. Collector reported in **1999 (112) E.L.T. A115 (S.C.), Ballarpur Industries Ltd. vs. CCE, Bhubneshwar** reported in **2005 (185) E.L.T. 67 (Tri. - Del.), Grasim Industries (Chemical Divn.) vs. CCE, Bhopal** reported in **2003 (153) E.L.T. 694 (Tri. - LB), SBPL Limited vs. CCE, Jaipur - II** reported in **2010 (254) E.L.T. 104 (Tri. -Del.), Gulf Oil Corpn. Ltd. vs. CCE, Ranchi** reported in **2009 (248) E.L.T. 523 (Tri. - Kolkata), PML Industries Ltd. vs. CCE, Chandigarh** reported in **2010 (259) E.L.T. 433 (Tri. - Del.), CST, Bangalore vs. Shiva Analyticals (I) Ltd.** reported in **2009 (14) S.T.R. 301 (Kar.), Dev Bhoomi Spinning & Weaving Mills vs. CC & CE, Chandigarh** reported in **2010 (262) E.L.T. 681 (Tri. - Del.), Mauria Udyog Ltd. vs. CCE** reported in **2007 (207) E.L.T. 31 (P & H)** and **Mauria Udyog Ltd. vs. Commissioner** reported in **2008 (221) E.L.T. A120 (S.C.)**, submitted that the respondent having disclosed the price and the duty in the invoices issued to the buyer, mere issuance of credit notes subsequent to such transactions that itself cannot amount to discharge of burden which assessee is required to discharge in terms of provisions of law to overcome the difficulty of unjust enrichment which every assessee has to establish in the case of claim of refund. According to Jt. CDR the present case is fully covered by the decision of the Tribunal in **SBPL Limited** case. Referring to the decision of the Rajasthan High Court in the matter of **Union of India vs. A.K. Spintex Ltd.** reported in **2009 (234) E.L.T. 41 (Raj.)**, the Jt. CDR submitted that the said decision was given in the peculiar facts of the case and this aspect has been duly considered by the Tribunal in the **SBPL Limited** case.

4. The learned advocate appearing for the respondent drawing our attention to invoices issued by the respondent and placing reliance in the decision in the matters of **Universal Cylinders Ltd. vs. CCE, Jaipur – I** reported in **2004 (178) E.L.T. 898 (Tri. – Del.)**, **Commissioner vs. Universal Cylinders Ltd.** reported in **2005 (179) E.L.T. A208 (S.C.)**, **CCE, Ludhiana vs. Bharat Box Factory Ltd.** reported in **2007 (218) E.L.T. 355 (P&H)**, **Union of India vs. A.K. Spintex Ltd.** (supra), **Andhra Pradesh Paper Mills Ltd. vs. CCE, Visakhapatnam – II** reported in **2009 (247) E.L.T. 659 (Tri. – Bang.)**, **Acme Diet Care Pvt. Ltd. vs. CCE, Ahmedabad** reported in **2009 (241) E.L.T. 257 (Tri. – Ahmd.)**, **Jyoti Limited vs. CCE, Vadodara – I** reported in **2008 (232) E.L.T. 832 (Tri. – Ahmd.)**, **Special Blasts Ltd. vs. CCE, Raipur** reported in **2005 (192) E.L.T. 331 (Tri. – Del.)**, **Sandfits Foundries Pvt. Ltd. vs. CCE, Coimbatore** reported in **2009 (238) E.L.T. 657 (Tri. – Chennai)**, **Shree Radhe Industries Ltd. vs. CCE, Raipur** reported in **2008 (227) E.L.T.**

100 (Tri. – Del.), CCE, Gurgaon vs. Uniproducts (India) Limited reported in **2009 (238) E.L.T. 735 (P & H), Mahanagar Gas Ltd. vs. CCE, Mumbai – II** reported in **2008 (225) E.L.T. 367 (Tri. – Mumbai), CCE, Madurai vs. N.V.K. Mohd Sultan Rowther & Sons** reported in **2008 (223) E.L.T. 276 (Tri. – Chennai), Varinder Agro Chemicals Ltd. vs. CCE, Ludhiana** reported in **2006 (206) E.L.T. 392 (Tri. – Del.)**, submitted that though there is a specific provision to the effect that in the case of increase in price the manufacturers are entitled to issue supplementary invoices, there is no similar provision in relation to reduction in price and, therefore, issuance of credit note would itself disclose the reduction in price or the reduction in duty amount which would entitle the assessee to claim the excess amount paid. Merely because there is no provision in the statute to meet such situation, it will be unjust to deny such claim of the assessees and bearing this aspect in mind, the above decisions have accepted the fact of issuance of the credit note to be sufficient to prove of discharge of burden in relation to non-passing of the duty element.

5. It is not necessary to refer all those decisions which are relied upon on either side. The facts in the matter are not in dispute. It is undisputed fact that the invoices issued by the respondent at the time of

clearance of the goods clearly disclosed the duty element which accompanied the price while clearing the goods in favour of the buyers. The contention of the respondent is that the credit notes correspond to the excess amount of duty paid by the respondent. The contention of the department is that mere issuance of such credit notes does not amount to discharging the burden in relation to non-passing over of the duty element on the buyers.

6. It cannot be disputed that once the manufacturer issues credit notes in relation to certain amount payable pursuant to the clearance of goods in terms of the invoices accompanying such goods, the manufacturer can certainly claim to have reduced either the price element or duty element in respect of which and to the extent the credit notes have been issued; however, it would be merely understanding and arrangement between the manufacturer and the buyer. There is no provision in the statute which says that issuance of credit note subsequent to the issuance of invoices would by itself result in amending the invoice or would result in reduction in price acceptable to the department. Bearing in mind, the normal human conduct, it is difficult to believe that any purchaser would go for any goods for an amount higher than the market value for which it is normally available. Being so, it is equally

difficult to believe that the manufacturer who is interested in disposing the goods manufactured by him would intentionally or otherwise disclose any higher amount in the invoices. There could be certainly an occasion to disclose a lesser amount for the goods cleared and exactly on that ground there is a specific provision in the statute which entitles the assessee to issue supplementary invoices in relation to the less price disclosed in the original invoice. There is no similar provision in the case of reduction in price. Obviously because no manufacturer would like to receive the price less than what is payable for his product while clearing the same.

7. Issuance of credit notes or debit notes is essentially for having proper account being settled or maintained between the parties. We have not been pointed out any statutory provision which gives recognition to such credit notes as forming part of the price fixation or assessment or the transaction value of the goods cleared by issuance of valid invoices. Being so, it is difficult to accept that mere issuance of credit note would result in discharging the burden relating to unjust enrichment. Mere issuance of credit notes will not ipso facto amount to non-passing over of duty element to the buyers. Besides, issuance of credit notes and debit notes are unilateral facts on the part of

assessees or buyers. It is always possible to issue such credit notes to depict to the department that the price sought to be recovered is less than the price disclosed in the invoices. When the manufacturer and buyer maintaining a running account, it is not impossible to ratify the effect of credit notes by issuing debit notes subsequently. In such circumstances, it will be always difficult for the department to maintain proper check on all such transactions. Bearing this in mind, therefore, it appears that no creditability has been given to such debit notes and credit notes in relation to fixation of the value of the product and the credence is given to the value discloses in the invoices. Certainly therefore it will be difficult to accept the contention on behalf of the assessee that issuance of credit note should amount to rebuttal of the presumption arising under statutory provision about passing over the burden of duty once the such duty element is disclosed in the invoices.

8. This does not mean that in case the assessee has received lesser amount of the duty element or in fact has not passed over the burden in that regard to the buyer, he cannot establish the same by producing some cogent evidence in that regard. If such evidence is produced obviously the authority will have to consider the same. However, mere issuance of credit notes

cannot in our considered opinion amount to discharge of burden.

9. Both the authorities below having ignored the above aspect, we find the orders are not maintainable and are liable to set aside.

10. The Adjudicating Authority in this case merely on the basis of the credit note had held that the burden was discharged by the respondent. It is not known whether there is any other material on record which could establish that the respondent had discharged that burden. The impugned orders do not refer to any such material. Considering the view that we are taking in the matter, all the decisions which are sought to be relied upon on either side which are given in peculiar facts of those cases, need not be considered in detail.

11. In the facts and circumstances of the case, therefore, we are left with no alternative then to set aside the impugned order and to remand the matter to the Adjudicating Authority to ascertain whether there is any other material which could disclose that the assessee had discharged the burden about non-passing over of duty. The Adjudicating Authority after hearing both the parties shall decide the matter accordingly afresh. However, we make it clear that mere production of credit notes cannot amount to discharge of burden.

Appeal accordingly is allowed and the matter is remanded to the Adjudicating Authority to decide afresh in accordance with the provisions of law.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK