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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/2625/2005 - EX[DB] Date **30/05/2012**

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

To :
C.C.E.JAIPUR-I
N.C.R.B.STATUE CIRCLE C-SCHEME JAIPUR
302005

C.C.E.JAIPUR-I Appellant

Vs

M/S VINAYAK AGROTECH LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.638 2012 EX|DB|** dated 29/5/2012 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 VINAYAK AGROTECH LTD.
E-158,ROAD NO-12,V.K.I.AREA
JAIPUR RAJASTHAN

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1,/1289A VASANT KUNJ
NEW DELHI-70

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-3
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

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 2625 of 2005

[Arising out of Order-In-Appeal No.61/CE/APPL/KNP/2009, dated 25.03.2009 issued by CCE, Kanpur]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, 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?	No
2	Whether it should 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 Departmental authorities?	Yes

CCE, Jaipur — Appellant
Vs.
Vinayak Agrotech Ltd. — Respondents

Coram :
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Appearance:
Ms. Sukritit Das, Advocate for the Appellants
Shri Sanjay Jain, AR for the Respondent

Date of Hearing : 29.02.2012

FINAL **ORDER NO . A/638/2012-EX (BR)**

Per Ms. Archana Wadhwa:

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. We have heard Shri I.Baig, ld. AR appearing for the Revenue and Ms. Sukriti Das, ld. Counsel appearing for the respondents.

2. Brief facts of the appeal are that the appellants are engaged in the manufacture of Vanaspati, Acid Oil, Soap Stock and Spent Nichel Catalyst falling under sub-heading No.1504.00, 3823.00, 1507.00 and 2620.00 respectively of the Central Excise Tariff Act, 1985. Appellants were availing exemption under Notification No.8/2002-CE, dtd. 01.03.02. At the time of imposition of duty on Vanaspati with effect from 01.03.02, the appellants cleared the excisable goods during March, 2003 under proper invoices showing duty payable @ 8% advalorem but charged Central Excise duty amounting to Rs.2,39,888/- from their customers and did not debit the same in their personal ledger accounts in as much as in terms of the said Notification, the clearances upto Rs.100 lakhs were exempted from the payment of duty and the respondents were entitled to clear their goods at nil rate of duty.

3. Thereafter, proceedings were initiated against the respondents for recovery of the said amount u/s 11D of Central Excise Act, 1944 along with interest u/s 11DD of the said Act. The demand was confirmed by the adjudicating authority along with interest and imposition of penalty of Rs.5,000/- under Rule 27 of Central Excise Rules, 2002.

4. Being aggrieved with the said order, respondents filed an appeal before Commissioner(Appeals) who allowed the appeal by observing as under :-

> "5. *I have gone through the case records, submissions made by the appellants in appeal memorandum and at the time of personal hearing. I find that the appellants had charged Central Excise duty @ 8% in the invoices for the month of March, 2003 from the customers but did not debit*

the amount in their personal ledger accounts as they erroneously showing in their invoices duty leviable at the rate of 8 per cent advalorem. This fact was brought into the notice of the department in reply to show cause notice that value of clearances were below Rs. One crore upto 31.03.03 and they were eligible for SSI exemption under Notification No.8/2002-CE, dtd. 01.03.02 and initially they had charged Central Excise duty from their customers but later on they had returned this duty by way of issuing credit Notes to their buyers. The adjudicating authority has not commented on appellants submissions whether duty was leviable on their goods, whether duty was charged in excess than leviable or not, but he has invoked provisions of ***Section 11D*** *of the Central Excise Act, 1944 which provides that* ***"Every person who is liable to pay duty under this Act or the rules made thereunder and has collected anyamount in excess of the duty assessed or determined and paid on any excisable goods."*** *From the above I find the appellant is not covered with any of the provisions of Section 11D ibid, i.e., (i) they are not liable to pay duty under the Act or the rules as they are availing of SSI exemption benefit (ii) they have not collected any excess amount of duty assessed or determined, (iii) they have not paid any duty on any excisable goods but accumulated with them only which was later on returned to their customers through Credit Notes. Appellants had returned the amount collected as duty to the buyers through credit notes, therefore, I hold as the duty shown in the invoices was returned to the customers, there was nothing for depositing with the Govt. on 31.03.03. The fact was got verified from the jurisdictional Deputy Commissioner who submitted his report dtd. 25.04.05 that M/s Vinayak Agrotech had returned the amount of Excise duty by cheque to the concerned buyers, therefore, I find that the contention of the appellants is correct. I further find that adjudicating authority has erred in applying the ratio of the decision of the Tribunal in the case of M/s Grasim India*

(Chemical Div.) reported in 2003(153)ELT694(Tri.-Del.-LB) because instant case is not the case of refund claim, therefore, the case is distinguishable."

5. Hence the present appeal by the Revenue.

6. The Revenue in their memo of appeal have reiterated the reasoning of the adjudicating authority that as the appellant had recovered the said duty from their buyers, the fact of issuance of credit notes subsequently would have no relevancy. They have accordingly pleaded that the Larger Bench decision in the case of Grasim India, laying down that once the amount of duty is collected and the issuance of credit notes later on, will amount to unjust adjustment on the part of the manufacturer.

7. We have considered the facts of the case and the legal issues involved. Admittedly, it is not the case of refund of duty "paid" in as much as no duty was ever paid by the appellants to the Revenue. As such the provisions of unjust enrichment will not apply, as rightly held by Commissioner(Appeals). The ratio of law declared in the Larger Bench decision in the case of Grasim India was in respect of duty which was paid by the assessee and refund was claimed subsequently. The same is not applicable to the facts of the present case.

8. Considering the provisions of section 11D, it is seen that the same are to the effect that every person who is liable to pay duty under this Act and the Rules made thereunder and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the Rules made thereunder from the buyers of such goods in any manner as representing duty of excise shall forthwith pay the amount so

collected to the credit of the Central Govt. In the present case, admittedly, the appellant was not liable to pay any duty of excise in as much as the goods were exempted. It is only that in the month of March, 2003, when their final product was brought under the duty, the respondents started collecting duty @ 8% from their customers. However, when they felt that such duty is not required to be paid to the Revenue, they returned the such collected duty to their customers by way of raising credit notes. As such it cannot be said that in terms of the provisions of section 11D, the respondents have **collected** any duty from their customers representing the same as excess duty. As such, demand in terms of section 11D is not required to be confirmed against the respondents. We do not find any infirmity in the order passed by Commissioner(Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Pronounced in the open Court on 29/5/12

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

RK-I