IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. E/54379 & 54380/2014-E[SM]
[Arising out of Order-In-Appeal No. 65(VC)CE/JPR-I/2014 dated 26.03.2014 passed by CCE (Appeals) Jaipur]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

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?	

M/s Siddharth Polysacks (P) Ltd. ...Appellant(s)

Vs.

C.C.E. & S.T. Jaipur-I …Respondent(s)

Appearance:
Mr. Alok Kothari for the Appellant
Mr. G R Singh DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 11.09.2015

Final Order No. 54323-54324 /2015

Per S K Mohanty:

These appeals are directed against the impugned order dated 1.5.2015 passed by the Commissioner (Appeals-I), Central Excise, Jaipur, upholding rejection of refund claim in the adjudication order on the ground of limitation.

2. Brief facts of the case are that the audit wing of Central Excise Department during the course of audit had detected irregular availment of cenvat credit by the appellant. On pointing out such mistake, the appellant had immediately reversed such Cenvat credit. The reversal particulars were intimated by the appellant to the Central Excise Department vide its letter dated 28.04.2009. In the said letter, the appellant had informed that the cenvat amount has been reversed under protest. Subsequently, the Department issued the SCN seeking denial of irregular availment of cenvat credit. The said notice culminated in the adjudication order dated 01.02.2010 wherein, cenvat credit with regard to some of the inputs were allowed. As a consequence of the favourable order, the appellant filed the refund application on 27.12.2011, claiming refund of cenvat credit allowed by the adjudicating authority. The refund application was rejected by the Adjudicating Authority vide order dated 28.08.2012, holding that the same is barred by limitation of time since the refund claim has been filed after one year from the date of the adjudication order. The appeal filed against the rejection of refund claim was also upheld by the Commissioner (Appeals). Thus, this present appeal is before the Tribunal.

2. Mr. Alok Kothari, the Ld. Advocate appearing for the appellant submits that pursuant to the favourable adjudication order dated 1.12.2010, the appellant filed the refund application on 27.12.2011. It is his submission that since the duty along with interest has been paid under protest, the time limit prescribed in sub section (1) of Section 11B of the Central Excise Act, 1944 will have no application and thus, rejection of refund claim is not legal and proper.

3. On the other hand, Sh. GR Singh, appearing for the Revenue-Respondent submits that as per the explanation appended to Section 11B, the refund claim is required to be filed from the date of the adjudication order allowing cenvat credit to the appellant, which in the present case is 01.02.2010. According to him, since the refund claim has been filed on 27.12.2011, as per the explanation of 'relevant date' contained in Section 11B of the Act, the same is clearly barred by limitation of time and thus, the authorities below are justified in denying the refund benefit.

4. I have heard the Ld. Counsel for both the sides and perused the records.

5. It is an admitted fact on record that the refund amount, in question, has been paid by the appellant under protest. Sub-section (1) of Section 11B provides the time limit of one year from the relevant date for filing the refund application. In the 2nd Proviso contained therein, it has been provided that the limitation of one year shall not apply where any duty and interest has been paid under protest. The explanation has been added to Section 11B with the purpose of clarifying the term relevant date as contained in Sub-Section (1), which deals with filing of refund application within one year in normal circumstances and the 2nd proviso contained therein provides that the time limit will not have any application, where the duty is paid under protest. In view of the mandates of Section 11B, in case of payment of duty under protest, the limitation for filing the refund application will not have application. Therefore, I am of the considered opinion that the refund application filed on 27.12.2011 pursuant to the favourable adjudication order dated 01.02.2010

cannot be considered as barred by limitation of time and thus, the appellant should be entitled for refund of the amount in question paid under protest.

6. In view of the above, the impugned order is set aside and the appeal is allowed in favour of the appellant with consequential benefits.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

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