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

Excise Appeal No. 59316 of 2013

[Arising out of Order-in-Original No. 71-CE/MRT-I/2013 dated 29.04.2013 passed by the Commissioner (Appeals), Central Excise Meerut]

Eveready Industries India Ltd. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Meerut

Appearance:

Shri Hemant Bajaj, Advocate for the Appellants
Shri S K Bansal, AR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 10.1.2018

FINAL ORDER NO.50279/2018

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed by the appellant against the order in original No. 71-CE/MRT-I/2013 dated 29.04.2013. Period of dispute is 18.1.2008 to 23.6.2008.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Dry cell batteries and torch lights and are registered with the Central Excise department. The appellant has established the

factory in Uttarakhand and were availing the benefit of excise duty under notification No. 50/2003 dated 10.6.2003.

3. Inspite of benefit availed under the said notification, the department has demanded the excise duty which was deposited by the appellant under protest. Later, the appellant has filed the claim of refund, same was denied by the department. Being aggrieved, the appellant has filed the present appeal.

4. With this background, we heard Shri Hemant Bajaj and Shri S K Bansal, learned counsel for the parties and gone through the material available on record.

5. After hearing both the sides, it appears that in the present case appellant is taking steps of dancing within the department. First, the Adjudicating Authority on 20.11.2009, passed the original order and the claim of the appellant was rejected. Being aggrieved, the appellant has filed the appeal before Commissioner (Appeals) who vide its order dated 22.4.2010 has remanded the matter to the adjudicating authority to verify the CA's certificate and allow the benefit to the appellant.

6. Adjudicating authority again vide its order dated 16.11.2010 has rejected the refund claim of the appellant. Being aggrieved, the appellant once again approached Commissioner (Appeals), who vide its order dated 19.1.2012 directed the original authority to verify the certificate of Chartered Accountant and relevant details of the

appellants' balance sheet relating to the duty amount. In the meantime, the department has approached the CESTAT against the earlier order passed by Commissioner (Appeals) dated 22.4.10 where the Tribunal dismissed the appeal filed by the Revenue as infructuous vide its order dated 18.2.2011.

7. The appellant again went to the adjudicating authority who on 8.1.2013 passed the order and again rejected the claim of the appellant. Being aggrieved, the appellant has again approached the Commissioner (Appeals) who vide order dated 29.4.2013 has rejected the claim of the refund. Still trying, the appellant has approached the Tribunal by filing the present appeal.

8. With this background, we heard Shri Hemant Bajaj and Shri S K Bansal, learned representatives of the parties and perused the material available on record.

9.. After hearing both the parties and on perusal of the material available on record, it appears that in the impugned order in para 4(ii), Commissioner (Appeals) has observed that no such documents is provided by the appellant even after providing sufficient time. In this regard they have filed written submission but no documentary evidence.

10. During the arguments, learned Counsel drew our attention to page 137 to a letter dated 18.12.2012 addressed to the adjudicating authority where department has given a receipt, duly stamped dated

18.12.2012 along with signatures. It is the submissions of the learned counsel that necessary CA certificate and balance sheet were submitted before the lower authorities.

11. From the above, it appears that necessary documents were submitted but the Commissioner (Appeals) has not given due consideration. When it is so, then we remand the matter to the Commissioner (Appeals) to decide the issue after verifying the CA's certificate and balance sheet etc. and their genuineness pertaining to the claim of refund, but by providing a reasonable opportunity to the appellant. Fresh evidence may be admitted as per law.

12. In the result, appeal is allowed by way of remand.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

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