IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Ex.Appeal No.154/09

(Arising out of Order-in-Appeal No.49/SLG/2008 dt.24.12.2008 passed by Commissioner of Central Excise (Appeals), Kol.IV)

Commr. of Central Excise, Siliguri

Applicant (s)/Appellant (s)

Vs.

M/s Perfect Technologies

Respondent (s)

Appearance:

Shri K. Chowdhury, Supdt. (AR) for the Revenue (s)
None for the Respondent (s)

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

Date of Hearing : 14.05.2018
Date of Decision : 14.05.2018

ORDER NO.F/O/76194/2018

Per Shri P. K. Choudhary :

The present appeal is filed by the Revenue against the Order-in-Appeal No.49/SLG/2008 dt.24.12.2008 passed by Commissioner of Central Excise (Appeals), Kol.IV.

2. When the matter was called, none appeared on behalf of the respondent. With the consent of ld.A.R. for the Revenue, we take up the appeal for final disposal, as the present appeal pertains to an old one.

3.1 Briefly stated the facts of the case are that the Respondent, M/s Perfect Technologies, Jorethang, South Sikkim, filed refund claim in respect of their clearance as per provisions of Area Based Exemption Notification No.71/2003-CE dated 09.09.2003. The Adjudicating Authority sanctioned the refund claim of Rs.2,80,32,001/- in terms of Condition No.3 (b) of the Exemption Notification No.71/2003-CE (supra). The Revenue was in appeal before the first Appellate Authority against the sanctioning of the said refund and the ld.Commissioner (Appeals) upheld the adjudication order and rejected the Revenue's Appeal. Hence, the present appeal by the Revenue before the Tribunal.

3.2 The period of dispute is October, 2007. It is the case of the Revenue that for availing Area Based duty exemption Notification lays down certain conditions, which needs to be fulfilled. Appellant Revenue has laid their grounds of appeal on the plea that the application for refund filed by the assessee before refund sanctioning authority was not "valid refund application" and was also not within the time limit as prescribed in the Notification.

4. Heard both sides and perused the appeal records.

5. We find that the refund sanctioning authority had sanctioned the refund to the assessee in terms of Condition No.3 (b) of the Exemption Notification No.71/2003-CE (supra) as amended and made applicable to certain specified areas of North-East (in this case – Sikkim). It is not in dispute that the Respondent assessee had paid the amount through Account current by debiting the said amount from their PLA in terms of Rule 8 of the Central Excise Rules, 2002, on 31.10.2007. We also observe that nowhere in the Notification, it has been stipulated that refund will be rejected as time barred if a

document is not submitted by the assessee or if the verification process is not completed by the authorities within a certain time. The concept of invoking time limit for rejection of refund is not available in this Notification and the time limit prescribed under Section 11B has not been transgressed. The conditions of Section 11B of the Central Excise Act, 1944, are not attracted in this case and it has been clarified in CBEC's Central Excise Manual, Chapter 9, Para 6.143. It has been held in various cases by the Tribunal and the Hon'ble High Courts that the benefit of exemption Notification, should not be denied even in cases on late filing of statement of cash duty paid, as long as, there is no allegation much less a finding that the respondent had not fulfilled the substantive condition of the Notification. It has also been held that when the duty had been paid and necessary documents submitted in the Office of the Superintendent, denial of benefit cannot be sustained when Revenue has to make *suo motu* refund to assessee in North Eastern States (in this case, Sikkim) and no refund application is required to be filed under Section 11B of the Central Excise Act,1944.

6. Since the substantive provisions of law having duly been complied with by the respondent-assessee, we do not find any infirmity in the impugned order and therefore, there is no reason to interfere with the same.

7. In the result, the appeal is dismissed.

(Operative part of the order was pronounced in the open Court.)

Sd/	Sd/
(BIJAY KUMAR)	**(P. K. CHOWDHARY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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