

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/144/2008

(Arising out of Order-in-Appeal No. 116/CE(A)/GHY/07 dated 20/11/2007 passed by Commissioner, Customs & Central Excise (Appeals), Guwahati.)

Commr. of Central Excise, Guwahati
Vs.

Appellant (s)

M/s. Duklingia Tea Estate

Respondent (s)

Appearance

Shri K. Choudhari, Suptd. (A.R.) for the Revenue
Shri Chandreyi Alam Gupta, Advocate for the Respondent

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing-10.12.2018

ORDER NO. FO/77177/2018

PER Bench

The present appeal is against the Order-in-Appeal No. 116/CE(A)/GHY/07 dated 20/11/2007. The respondent is working under the provisions of Area Based Exemption Notification No.33/99-CE dated 08/07/1999 (as amended). In terms of the Provisions of the Notification, the units working in the specified area are entitled to refund of the Central Excise Duty paid, subject to the conditions specified in the Notification. The dispute concerns the refund paid to the respondent for clearance made during the period July 1999 to December, 2002. The entitlement of the Respondent to the benefit of the Area Based Exemption was in dispute earlier. This dispute came to be settled at the level of the Commissioner (Appeals), with issue of his Order-in-Appeal dated 25/01/2005. The respondent was held as eligible for the benefit of the

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Notification No. 33/99. The Consequential Refund was paid by the Jurisdictional Assistant Commissioner. Jurisdictional Commissioner, upon Review of the order directed the Assistant Commissioner to file an appeal against his own order to the Commissioner (Appeals). This resulted in the impugned order being passed by the Commissioner (Appeals), in which he decided the issue in favour of the Respondent. Hence, the present appeal before the Tribunal.

2. Heard Shri K. Choudhary, Ld. DR for the Revenue and Chandreyi Alam Gupta, Ld. Advocate for the Respondent.

3. The Ld. DR submitted that the Refund Claims in question were paid by the Assistant Commissioner even though such claims were filed beyond the time limit specified in Section 11B, hence he prayed for the impugned order to be set aside.

4. The Advocate for the respondent justified the impugned order.

5. He referred to the findings of the Commissioner (Appeals) and submitted that the issue was decided by the Commissioner (Appeals). In his order dated 25/01/2005, the Assistant Commissioner has only implemented the order and paid the refund as a consequence to the order dated 25/01/2005. The jurisdictional Commissioner had accepted the order dated 25/01/2005 and having failed to challenge the same, the issue has attained finality and cannot be re-opened in the present proceedings.

6. Heard both sides and perused the record.

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7. The basic issue in question was the entitlement of the Respondent for the benefit of the Area Based Exemption under Notification No. 33/99. The issue has been decided in favour of the Respondent at the level of the Commissioner (Appeals) vide his order dated 25/01/2005. This order also has been accepted by the Jurisdictional Commissioner without challenging it further. The sanction of refund by the Assistant Commissioner is only a consequence to the decision of the Commissioner (Appeals) dated 25/01/2005. Without challenging the decision by the Commissioner (Appeals), we find no justification for challenging the grant of such refund through the present appeal.

8. In view of the above, we sustain the impugned order and reject the appeal filed by Revenue.

(Dictated and Pronounced in the Open Court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(V. PADMANABHAN)
MEMBER (TECHNICAL)

Pooja