IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.12.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

C.M.A.No.3315 of 2009

Commissioner of Central Excise,
Chennai-I, Commissionerate,
26/1 (Old No.121), M.G.Road,
Chennai 600 034. ... Appellant

Versus

M/s.Indian Organic Chemicals Ltd.,
Post Bag No.7, Manali,
Chennai 600 068. ... Respondent

Prayer: Civil Miscellaneous Appeal filed filed under Section 35G of the Central Excise Act, 1944 against the Final Order No.597 of 2009 dated 11.5.2009 on the file of the CESTAT, South Zonal Bench, Chennai.

For appellant : Mr.A.P.Srinivas, Standing Counsel

For R1 : Mr.R.Raghavan

JUDGMENT

(Judgment of the court was made by HULUVADI G. RAMESH, J.)

Heard Mr.A.P.Srinivas, learned counsel appearing for the appellant and Mr.R.Raghavan, learned counsel appearing for the first respondent.

2. This appeal is filed by the Department under section 35G of the Central Excise Act, 1944 against the Final Order No.597 of 2009 dated 11.5.2009 on the file of the CESTAT, South Zonal Bench, Chennai.

3. It appears that the respondent is a manufacturer of Polyester Staple Fibre falling under Chapter No.55 and Polyester Chips falling under Chapter sub-heading No.3907.60 of the Schedule to the Central Excise Tariff Act, 1985. During the month of September and October 1995, the respondent removed 23915 Kgs. of Polyester Staple Fibre to Khadhi and Village Industries Board (TN) and Khadhi and Village Industries Commission without payment of duty in terms of Notification No.191/85-CE dated 28.8.1985. The assessee had used the polyester chips weighing 26904 Kgs for the manufacture of polyester staple fibre. Since credit had been availed for the input referred to supra, the respondent-assessee reversed the total credit of Rs.3,48,526/- and later, a claim for refund has been filed by the respondent on 16.1.2001, to the tune of Rs.1,00,471/- since already the amount was already reduced for the balance amount. However, the Department has issued a show cause notice on 19.2.2001, rejecting the refund claim as time barred under section 11-B of the Central Excise Act, 1944, against which, an appeal was preferred in Appeal No.35 of 2002. The Commissioner of Central Excise (Appeals), had taken a view that the assessee is not eligible for refund as the same is hit by limitation. The appeal preferred by the assessee before the CESTAT was allowed holding that the claim of the assessee is not hit by limitation, as against which the present appeal is filed by the Department.

4. The substantial questions of law raised in this appeal for consideration at the time of admission are under:-

> "(1) Whether, on the facts and circumstances of the case, the Appellate Tribunal is right in allowing the refund of duty which was not paid under protest, but paid voluntarily, by the respondent after issuance of show-cause notice by the department?
>
> (2) Whether, on the facts and circumstances of the case, the Appellate Tribunal is right in allowing the refund of duty without applying the time limit as prescribed under Section 11-B of the Central Excise Act, 1944?"

5. We find that the duty has been refunded at the appellate stage. Thus, the date of claim would have to partake to the original date and not from the subsequent date. Thus, the view that the claim is a time barred one is not correct, insofar as the claim should be taken to the original date and not to the subsequent date. In this view of the matter, the refund has been correctly granted and we confirm the order of the Tribunal,

but on a different aspect. Accordingly, the Civil Miscellaneous Appeal filed by the Department is dismissed, confirming the order of the Tribunal. It is for the Department to refund the amount. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssk.

To

The Commissioner of Central Excise,
Chennai-I, Commissionerate,
26/1 (Old No.121), M.G.Road,
Chennai-34.

+1cc to Mr.A.P.Srinivas, Advocate SR.72716
+1cc to Mr.R.Raghavan, Advocate Sr.72614

C.M.A.No.3315 of 2009

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srg 19/01/2017