

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Central Excise Appeal No. 06 of 2008

Nov Sara India (Pvt.) Ltd.
(Formally known as Sara Services and Engineers Pvt. Ltd.)
(Through its Vice President (Commercial),
Sri P.K. Dhawan)
Mohobewala Industrial Area, Dehradun.

..... Appellant

Versus

1. The Customs Excise & Service Tax Appellate
Tribunal (CESTAT),
West Block –2, R.K. Puram.
2. The Commissioner,
Customs and Central Excise, Meerut –I,
Mangal Pandey Nagar, Meerut.

..... Respondents

Mr. P.R. Mullick, Advocate for the appellant.
Mr. S.K. Mishra, Standing Counsel for the respondents.

Coram : **Hon’ble Prafulla C. Pant, J.**
 Hon’ble B. S. Verma, J.

Hon. Prafulla C. Pant, J. (oral)

This appeal, preferred under Section 35G of the Central Excise Act, 1944, is directed against the order dated 03.10.2007, passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (for brevity hereinafter referred as CESTAT), in Excise Appeal No. 3106 of 2004.

2) The substantial question of law raised in this appeal is that whether, the CESTAT has erred in law in holding that in absence of order passed under Section 9B of the Central Excise Rules, 1944, the deposit made by the assessee (present appellant) allegedly against CT-2 certificates, cannot be refunded being barred by limitation under Section 11B of the Central Excise Act, 1944? Another substantial question raised in this appeal is whether, the deposits made under Chapter X of the aforesaid Rules in its nature, provisional.

3) We heard learned counsel for the parties and found that the impugned order has been passed in absence of the appellant. Learned counsel for the appellant submitted that due to unavoidable reasons the representative of the assessee (appellant) could not appear before the CESTAT on the date when the matter was heard. Our attention is drawn to letter C.N. 20-CE / SS / CT-2 / R-II / 99 / 296 dated 09.04.1999 (copy Annexure –4 to the affidavit filed with the appeal) issued by the Superintendent, Customs and Central Excise, Range –II, Dehradun, whereby the appellant was directed to make deposit of the duty, refund of which is in question. Said letter contains subject – ‘certificate for procurement of excisable goods under Chapter X’. It is contended on behalf of the appellant that like deposits made under Rule 9B of the Central Excise Rules, 1944, the nature of deposits made under Chapter X is also provisionally. It is further provided that Oil and Natural Gas Corporation being a Public

Sector Undertaking of the Government of India is exempted under Rule 221A of Chapter XIV of the Central Excise Rules, 1944, from furnishing surety / security bonds.

4) Having considered submissions of learned counsel for the parties and after going through the papers on record we think that on the facts and circumstances of the case, the appellant be given one more opportunity by the CESTAT before whom it had filed the appeal, and the appeal be decided on merits, afresh. Accordingly, the impugned order dated 3rd of October 2007, passed in Excise Appeal No. 3106 of 2004, is set aside, with the observation that the Tribunal shall give one more opportunity to the appellant to be heard on the appeal filed before it, and fresh orders may be passed by the Tribunal. We make it clear that if the appellant or his representative fails to turn up on such opportunity given by the Tribunal, under directions of this Court, the Tribunal is at liberty to pass the orders ex-parte.

5) With the above observation, this appeal stands disposed of.

(B.S. Verma, J.)

(Prafulla C. Pant, J.)

Dt. July 31, 2009.

H. Negi