(2021) 03 CESTAT CK 0031

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Central Excise Appeal No. 20035 Of 2020

BASF India Ltd. — APPELLANT

Vs

Commissioner Of Central Excise And Central Tax, Mangalore Commissionerate — RESPONDENT

Date of Decision : 19-03-2021

Acts Referred:
Central Excise Act, 1944 — Section 11B, 11B(a)(i)
Customs Act, 1962 — Section 27

Citation : (2021) 03 CESTAT CK 0031

Hon'ble Judges : S.S. Garg, J

Bench : Single Bench

Advocate : Neethu James, Lakshmi Kumaran, Sridharan, P. Gopakumar

Final Decision : Allowed

Judgement

1. The present appeal is directed against the impugned order dated 22/10/2019 passed by the Commissioner of Central Tax (Appeals) Belgaum whereby the learned Commissioner has upheld the Order-in-Original and rejected the refund claim of Rs. 16,04,530/- (Rupees Sixteen Lakhs Four Thousand Five Hundred and Thirty only) as time-barred under Section 11B of the Central Excise Act, 1944. Briefly the facts of the present case are that the appellants exported the excisable goods on payment of Central Excise duty and thereafter on 20/03/2013, appellant filed two rebate claims for an amount of Rs. 31,77,999/- (Rupees Thirty One Lakhs Seventy Seven Thousand Nine Hundred and Ninety Nine only) and Rs. 40,52,189/- (Rupees Forty Lakhs Fifty Two Thousand One Hundred and Eighty Nine only) [totally amounting to Rs. 72,30,188/- (Rupees Seventy Two Lakhs Thirty Thousand One Hundred and Eighty Eight only)] in respect of duty paid on goods exported. After following the due process, the original authority vide its order dated 18/06/2014 sanctioned the refund of Rs. 71,91,830/- (Rupees Seventy One Lakhs Ninety One Thousand Eight Hundred and Thirty only) as rebate in cash to the appellant and Rs. 38,358/- (Rupees Thirty Eight Thousand Three Hundred and Fifty Eight only) as credit to their

cenvat credit account. However, the learned Assistant Commissioner appropriated an amount of Rs. 16,04,530/- (Rupees Sixteen Lakhs Four Thousand Five Hundred and Thirty only) towards the arrears pending from the appellants in respect of Order-in-Original No. 25/2012 dated 27/11/2012 from the total rebate of Rs. 71,91,830/- (Rupees Seventy One Lakhs Ninety One Thousand Eight Hundred and Thirty only) under Section 11B of the Central Excise Act, 1944 and refunded balance rebate of Rs. 55,87,300/- (Rupees Fifty Five Lakhs Eighty Seven Thousand and Three Hundred only) to the appellants. Aggrieved by the said order, the appellant filed appeal before the Commissioner and the Commissioner (Appeals) vide order dated 27/07/2015 modified the Order-in-Original and held that the appropriation/adjustment of the rebate claims against the duty demand arising out of other cases in which the appeals along with stay application is pending before the CESTAT is not sustainable and is bad in law and also held that the appellants are entitled to the entire amount of Rs. 72,30,188/- (Rupees Seventy Two Lakhs Thirty Thousand One Hundred and Eighty Eight only) in cash. After the decision of the Commissioner (Appeals) the appellant from July 2015 to 2018 verbally requested the Range Division office to release the balance refund and thereafter vide letter dated 14/01/2019, appellant requested the Assistant Commissioner to release the balance amount of Rs. 16,04,530/- (Rupees Sixteen Lakhs Four Thousand Five Hundred and Thirty only) withheld from the rebate claim in view of the Order-in-Appeal dated 27/07/2015. Thereafter on 02/04/2019, a show-cause notice was issued to the appellant proposing to reject the refund on the ground of time-bar. After following the due process, vide Order-in-Original dated 29/04/2019, the original authority rejected the claim on time-bar and the appeal filed before the Commissioner (Appeals) was rejected. Hence, the present appeal.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents. She further submitted that the impugned order is totally misconceived by wrongly considering their reminder/request letter dated 14/01/2019 to release the refund amount, as the relevant date to decide the time limit under Section 11B of the Central Excise Act, 1944. She further submitted that the relevant date in the present case shall be governed by the provisions of Clause (B)(a)(i) to Section 11B of the Central Excise Act i.e. date of export. The goods were exported between 23/09/2013 to 27/12/2013 and the rebate claim was filed on 20/03/2014 which was well within one year from the date of export. The same has been upheld by the learned Assistant Commissioner in his findings at para 17 of the Order-in-Original dated 18/06/2014 and consequently sanctioned the rebate claim. However, the learned Assistant Commissioner appropriated an amount of Rs.16,04,530/- (Rupees Sixteen Lakhs Four Thousand Five Hundred and Thirty only) against the pending dues which was set aside by the Commissioner (Appeals) vide Order-in-Appeal dated 27/07/2015. She further submitted that after the decision of the

Commissioner (Appeals) there was no need for filing another application for refund and the Department suo motu should have sanctioned the refund in cash in terms of the Commissioner (Appeals) order. She further submitted that the provision of Clause (ec) is relating to consequential refund of duty arising out of an appellate order and is applicable to cases where issue such as dutiability or rate of duty or value or availability of cenvat was decided by the appellate authority, Appellate Tribunal or any Court resulting in consequential refund. In such a situation, where no refund claim was filed earlier and the refund claim is being filed for the first time after the appellate order, the relevant date for filing refund will be the date of such appellate order. She also submitted that this provision is not applicable in the present case because the refund claim has not arisen consequent to any appellate order but has arisen on account of export of goods. The appellate order was passed in connection with the refund claim filed by the appellant. The said Order-in-Appeal which is referred to in the present case is only deciding the correctness of the adjustment of rebate claim already filed on 20/03/2013 and sanctioned by the Original Authority vide its order dated 18/06/2014. She further submitted that the Department having accepted the Order-in-Appeal dated 27/07/2015 and not filed appeal against the same, was duty bound to suo motu refund the amount in cash as ordered by the Commissioner (Appeals). The Department by withholding the amount unjustly cannot enrich itself on frivolous grounds that the appellant claimed refund belatedly. She further submitted that the provision of Section 11B does not envisage the assessee to file fresh refund application following a successful appeal/revision proceeding. Subsequent to reminder letter dated 14/01/2019 filed by the appellant has no relevance to determine the time limit under Section 11B of the Central Excise Act, 1944. For this submission, she has relied upon the following decisions:

· SPIC Ltd. Vs. CCE, Chennai - 2007 (209) E.L.T. 91 (Tri.- Chennai) further affirmed by Hon'ble High Court of Madras - 2015 (318) E.L.T. A178

· VVF Ltd. Vs. CCE & ST, Daman - 2018-TIOL-509-CESTATAHM

· GIL Shared Services Pvt. Ltd. Vs. Asst. Commr. of GST & CE, Chennai - 2019 (29) G.S.T.L. 693 (Mad.)

· CCE, Pune-III Vs. Movilex Irrigation Ltd. - 2007 (207) E.L.T. 617 (Tri.- Mum.)

4. On the other hand the learned AR reiterated the findings of the impugned order.

5. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant filed the refund claim on 20/03/2013 in respect of the duty paid on the goods exported. The Assistant Commissioner sanctioned the refund but appropriated an amount of Rs. 16,04,530/- (Rupees Sixteen Lakhs Four Thousand Five Hundred and Thirty only) towards arrears pending in another case and the said appropriation was set aside by the

Commissioner (Appeals) and thereafter it was incumbent on the Department to refund the said amount of Rs. 16,04,530/- (Rupees Sixteen Lakhs Four Thousand Five Hundred and Thirty only). When the Department did not refund the said amount, the appellant after waiting about four years wrote a letter dated 14/01/2019 requesting the Assistant Commissioner to release the amount in view of the judgment of the Commissioner (Appeals) dated 27/07/2015 but the Department wrongly issued a show-cause notice proposing to deny the refund claim on time-bar and subsequently denied the refund claim by Order-in-Original dated 29/04/2019 on time-bar and the same was upheld by the Commissioner (Appeals) by the impugned order. Further, I find that the Commissioner (Appeals) has wrongly invoked the provision of Clause (ec) for denying the refund on the ground that the refund has arisen on account of the order passed by the Commissioner in appeal whereas in fact the refund has arisen on account of export of goods and the Department having accepted the order of the Commissioner (Appeals) dated 27/07/2015 should have refunded the amount in cash to the appellant. This issue has been considered by the Tribunal in the case of SPIC Ltd. Vs. CCE, Chennai (cited supra) wherein on identical facts, the Chennai Bench of the CESTAT has held that there is no need to file any refund application under the provisions of the Act. The relevant findings are recorded in para 9 and 10:

"9. I have carefully considered the submissions made by both the parties. There is no dispute that the importer had paid amounts in excess of the duty legitimately due to be paid by them and that they had filed their initial refund claims as per Section 27 of the Customs Act, 1962 within the statutory limit. Their claims had been rejected by the Assistant Commissioner (Refunds) and they had filed appeals before the lower appellate authority which had been allowed. However, they had not filed refund claims subsequent to receipt of such favourable orders from Commissioner (Appeals), as a decision in their favour on the claims already filed by them had been rendered by the Appellate Commissioner. Their claims had remained unsettled at the time when the Constitution Bench of the Hon'ble Supreme Court had examined the question of unjust enrichment and refund under Section 11B of the Central Excise Act/ Section 27 of the Customs Act in the Mafatlal Industries Ltd. case (supra).

10. In Para 100 of the Mafatlal Industries Ltd. judgment, the Supreme Court had directed that in respect of claims which had been pending in suits/writ appeals, the concerned petitioners should file refund claims within 60 days of pronouncement of the judgment in that case. In the instant case, the appellants had received favourable orders vide Orders-in-Appeal dated 14-6-93 and 30-10-96. Subject claims had not been pending in any proceeding before any court at the time when the Hon'ble Supreme Court pronounced the judgment. What the Hon'ble Supreme Court ordered in Para 100 extracted above is in respect of claims involved in pending Writ petitions/Writ appeals/suits. Therefore, it cannot be said that the subject claims are governed by the directions of the Apex Court referred to above. In the Kerala State Electricity Boards case, the

Kerala High Court dismissed the petition filed by the Kerala State Electricity Board for the reason that they had not complied with this direction of the Hon'ble Supreme Court and ordered that their only recourse was to approach the Hon'ble Supreme Court. In both the cases relied on in the impugned order, the appellants had not filed claims as per Section 11B of the Central Excise Act. In case of the present appellants they had filed refund claims in accordance with law. Section 11B, either before the amendment or after the amendment does not envisage that the assessee should file fresh refund application following a successful appeal/revision proceedings by the parties. Once a refund claim is filed, before the concerned authority, as has been done by the appellants in the present case, statutory requirement in this regard has been complied with by the claimant seeking refund under the Act. Refund application need not be made at each stage if the initial claim before the Assistant/Deputy Commissioner is not successful. The law laid down by the Apex Court in the Mafatlal Industries Ltd. is that all refund claims including those made pursuant to an Order-in-appeal/ revision were subject to provisions of Section 11B of the Central Excise Act/ Section 27 of the Customs Act. I am therefore, of the considered view that the appellants are eligible for the refund amounts claimed. Their claims shall be allowed after scrutiny also from the angle of unjust enrichment as ordered by the Commissioner (Appeals). Accordingly, I allow both the appeals."

5.1. Further this decision of the CESTAT has been upheld by the Madras High Court which is reported in 2015 (318) E.L.T. A178. Further in the case of VVF Ltd. (cited supra), the Ahmedabad Bench of the CESTAT also held that second refund claim need not be filed again for claiming the refund arisen from the Order-in-Appeal. Further in the case of GIL Shared Services Pvt. Ltd., Hon'ble Madras High Court by relying upon its earlier decision in the case of SPIC Ltd. has allowed the claim of the assessee.

6. In view of my discussion above, by following the ratios of the various decisions cited supra, I am of the considered view that the impugned order is not sustainable in law, therefore the same is set aside by allowing the appeal of the appellant.

(Order was pronounced in Open Court on 19/03/2021)

