(2024) 01 CESTAT CK 0052

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 10272 Of 2023

Bhavani Industries India LLP APPELLANT

Vs

Commissioner Of Central Excise And Service Tax ? Rajkot RESPONDENT

Date of Decision : 18-01-2024

Acts Referred:
Central Excise Act, 1944 — Section 11B, 11B(2)

Citation : (2024) 01 CESTAT CK 0052

Hon'ble Judges : Ramesh Nair, Member (J)

Bench : Single Bench

Advocate : Rahul Gajera, P Ganesan

Final Decision : Allowed

Judgement

Ramesh Nair, Member (J)

1. This appeal is filed against Order-In-Appeal No. RAJ-EXCUS-000-APP-009-2023 dated 02.02.02023 of Commissioner (Appeals) GST & Central Excise, Rajkot by which learned Commissioner has upheld Order-In-Original dated 06.01.2022 of the Assistant Commissioner, Central Excise & CGST, Division-I Rajkot, partially allowing the refund claim of the appellant arising out of Final Order No. A/ 11917-11918 dated 27.8.2018 of this Tribunal.

1.1 The appellant by way of present appeal has prayed that:-

(i) The impugned Order rejecting the return/refund of Rs. 4,23,059/- be set aside

(ii) The appellant be granted the return/refund of Rs. 4,23,059/-with interest from the date of deposit of the said amount upto the date of sanction of the said amount

(iii) The appellant be granted full interest on Rs. 33, 990/- from the date of deposit upto sanction of the said amount

(iv) Consequential relief/benefit as per law be granted to the appellant

(v) Any other or further relief which this Hon'ble Tribunal deems fit in the interest of justice

1.2 Briefly the facts are that appellant during audit objection did not agree with the officers of the department as regards reversal of cenvat credit relating to premium paid on product liability and recall insurance towards its manufacturing activity, however, upon insistence of the officers of audit, paid an amount of Rs. 4,57,049/- under protest, in respect of which appeal of the appellant was allowed by this Tribunal and has attained finality. Pursuant thereto, appellant filed refund claim; however, a show cause notice was issued mainly that claim has to pass test of unjust enrichment under section 11B (2) of the Act. The Assistant Commissioner held that the test of unjust enrichment would apply and that chartered account in his second certificate has stated that claim amount has been expensed out in profit and loss account and on that basis denied the refund claim amounting to Rs. 4, 23,059. The Commissioner (Appeals) upheld the Order of Assistant Commissioner and hence the present appeal of appellant against the same.

2. Shri Rahul Gajera, Learned Counsel appearing on behalf of appellant, it is submitted that principle of unjust enrichment would not apply to deposits made during audit/investigation under protest and that refund of deposit is required to be granted with interest from the date of deposit, as recovery of such amount before issuance of show cause notice and adjudication order was without authority of law. In this behalf he relied upon the following decisions:-

• Chambal Fertilizers & Chemicals Ltd V. Commissioner, CGST, Udaipur – 2023 (71) G.S.T.L 171 (Tri. Del.)

• Advance Steel Tubes Ltd Versus Commissioner of Central Excise – 2018 (11) G.S.T.L. 341 (All.)

• Team HR Services Pvt Ltd V. Union of India – 2020 (38) GSTL 457 (Del.)

• CCE V KVR Construction – 2012 (26) STR 195 (Kar.) Upheld by

Hon'ble Supreme Court in 2018 (14) GSTL J70 (SC)

• Commissioner Of C. Ex., Chennai-II vs Ucal Fuel Systems Ltd, 2014 (306) ELT 26 (Mad.)

• CCE V. Balaji Wire Ltd – 2018 (12) TMI 1577

• M/s. Parle Agro Pvt Ltd Versus Commissioner, Central Goods & Service Tax, Noida - 2022 (380) ELT 219 (Tri, All.)

• Hasmukh Tobacco Products Vs. CCE & ST, AHD

• Omega Elevators – 2023 (1) TMI 738 0 CESTAT AHD

3. Shir P Ganesan, Learned Superintendent (AR) appearing on behalf of Revenue, it is urged that appellant has not shown claim amount as receivable in the

balance sheet and that bar of unjust enrichment would apply to the refund claim. He relied upon the impugned order.

4. I have carefully considered the submissions made by both the sides and perused the records. I find that the refund claim pertained to Cenvat credit of service tax paid on product liability and recall insurance premium which was denied by revenue on the ground that the same are post removal services. This tribunal vide Order dated 27.09.2018 set aside the Order-In-Appeal and held that product liability and recall insurance services falls within the definition of input services of a manufacturer and appellant is eligible to Cenvat credit. That Order dated 27.09.2018 of this Tribunal has attained finality.

4.1 It can be seen that amounts so paid during audit objection was not duty on clearance of goods, but effectively reversal of Cenvat credit. It has been held in the following decisions of Chambal Fertilizers & Chemicals Ltd and Advance Steel Tubes Ltd supra that amounts not paid during clearance but paid during investigation for past period are not subjected to test of unjust enrichment and further that amount deposited was accounted as ‘expense’ in the profit and loss account of the appellant was also of no consequence as method of accounting followed by an assessee cannot be made basis to hold that the incidence of duty has been passed on. The above decisions are applicable to the facts of this case and hence, it is to be held that the bar of unjust enrichment is not applicable to such amounts paid during investigation.

4.2 As there is no dispute to the fact that amounts relating to cenvat credit availed were collected from the appellant before issuance of show cause notice and adjudication order, and it is available on record that appellant during audit objection resisted the demand of reversal of Cenvat credit and have debited the same under protest; such recovery of amount before creation of liability was without authority of law and cannot be treated as tax but revenue deposit only. It is settled law that section 11B has no application to revenue deposit made during investigation. Reliance in this behalf is placed on the decision of M/s. Parle Agro Pvt Ltd supra in which it is held that section 11B has no application to revenue deposit, and such deposits are required to be refunded with interest @ 12% from the date of deposit.

5. In view of the settled legal position as discussed above, the appeal merits to be allowed. Accordingly the impugned order is set aside and appeal is allowed with consequential relief as per law.