
(2023) 08 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 11473 Of 2013

C.C.E. & S.T.-Ahmedabad-III

APPELLANT

Vs

Raajratna Metal Industries Ltd

RESPONDENT

Date of Decision : 02-08-2023

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 5
Central Excise Rules, 2002 — Rule 16
Central Excise Act, 1944 — Section 11B, 11BB

Citation : (2023) 08 CESTAT CK 0009

Hon'ble Judges : Ramesh Nair, Member (J); C.L. Mahar, Member (T)

Bench : Division Bench

Advocate : Rajesh Nathan, Amal Dave

Final Decision : Partly Allowed

Judgement

Ramesh Nair, Member (J)

1. The revenue filed the present appeal against the order of Commissioner (Appeals) dated 08.01.2014. By the impugned order learned Commissioner (Appeals) allowed the appeal of the respondent on the issue of eligibility of the interest on the refund sanctioned by the department. The ground taken by the department in the appeal is that the provisions of the Central Excise Act namely Sections 11B and 11BB do not applied to the refund of Cenvat Credit. It is department's case that the provision of Sections 11B and 11BB, only apply to refund of duty and not to refund Cenvat Credit under Rule 5 of Cenvat Credit Rules, 2004. It is submitted that it was also contended in the appeal of the revenue that the matter was under continuous litigation and hence refund claim sanctioned once the litigation was over, therefore no interest is payable.

2. Shri Rajesh Nathan, Learned Assistant Commissioner (AR), appearing on behalf of the revenue reiterates the grounds of appeal.

3. Shri Amal Dave, Learned counsel appearing on behalf of the respondent

submits that, this very issue was considered by the Hon'ble Gujarat High Court in the case of Reliance Industries Ltd reported at 2010 (259) ELT 356 (Guj.) wherein the Hon'ble Court categorically held that provision of Section 11B and 11BB are applicable to the refund of accumulated Cenvat Credit under Rule 5 of Cenvat Credit Rules, 2004. This decision was upheld by the Hon'ble Apex Court vide its decision reported at 2011 (274) ELT A110 (S.C.) whereby the revenue's appeal was dismissed. Similarly, the Hon'ble Gujarat High Court in the case of M/s Indo-Nippon Chemical Company Ltd reported at 2005 (185) ELT 19(Guj.) and the Madras High Court in the case of M/s Netapp India Pvt. Ltd reported at 2020 (32) GSTL 176 (Kar.) also held the same. In view of this settled position the revenues appeal on the ground that Section 11B of 11BB are not applicable in the case of refund of accumulated Cenvat Credit under Rule 5 of Cenvat Credit Rules, 2004 is devoid of any merit in as much as Commissioner (Appeals) relied upon the decision of the Hon'ble Gujarat High Court to allow the interest on refund.

3.1 As regard the contention of the revenue that since the matter was under continuous litigation and after the litigation was over, refund was mature, He submits that in 2006, there was a retrospective amendment and the issue was settled by virtue of the said amendment. The department did not sanction the refund in 2006 when the amendment took place and only sanctioned the claim in 2012. The pendency of the respondent's SCA before the Hon'ble Gujarat High Court was already infructuous once the amendment took place in 2006, merely because the SCA was pending it cannot absolve the department from the fact that the amendment, which took place in 2006 took care of the situation and the revenue was bound by such amendment. Even, otherwise there is no provision in the statute that absolves the department from interest liabilities, in such a situation the Revenue Authorities are bound to pay interest after lapse of three months, if ultimately refund is sanctioned. Therefore, on this ground also denial of interest is not tenable. He placed reliance on the following Judgments:

- CCE, V/s. Reliance Industries Ltd. 2010 (259) ELT 356 (Guj.)
- Commissioner V/s. Reliance Industries Ltd. 2011 (274) ELT A110(S.C.)
- Indo-Nippon Chemicals Co. Ltd. V/s. UOI 2005 (185) ELT 19 (Guj.)
- Assistant Commissioner V/s Indo-Nippon Chemicals Co. Ltd 2005 (186) ELT A117(S.C.)
- CCE, Bengaluru V/s. Netapp India Pvt. Ltd. 2020 (32) GSTL 176 (Kar.)
- Final order No. A/11315-11316/2022 passed by CESTAT Ahmedabad in case of M/s. Reliance Industries Ltd.
- Pricewaterhousecoopers Service Delivery Center (Kolkata) Pvt. Ltd. V/s. CCE, Kolkata, North 2021 (52) GSTL 58 (Tri.-Kolkata)

4. We have carefully considered the submissions made by both the sides and

perusal of record, we find that the limited issue in the present case to be decided is that whether the respondent is entitled for interest on refund already sanctioned and if yes, from which date? The refund which was filed on 01.06.2004 and 25.06.2004 for the period April-03 to September-03 was kept pending by the department, on the dispute that since the respondent's activity i.e. drawing of wire was held does not amount to manufacture, the respondent was not entitled for the Cenvat Credit and consequential refund of the said Cenvat Credit under Rule 5 of Cenvat Credit Rules, 2004 was also under dispute.

4.1 We find that the eligibility of Cenvat Credit in the above facts was extended by retrospective amendment of Rule 16 of Central Excise Rules, 2002. Whereby, the assessee (wire drawing units) becomes entitled for the Cenvat Credit on 13.07.2006. The revenue's contention that the Rule 5 refund is not eligible for interest as the provisions of Section 11B and 11BB are not applicable, for such refund under Rule 5 is no longer under dispute in the light of the jurisdictional High Court of Gujarat judgment in the case of Reliance Industries Ltd (Supra). Therefore, there is no doubt that the respondent are legally entitled for the interest under Section 11BB of Central Excise Act, 1984.

4.2 As regard the contention of the revenue that the matter was under continuous litigation therefore, the refund was not mature, we find that there is no force in the said contention for the reason that once the retrospective amendment was brought into effect on 13.07.2006, thereafter, this contention of the revenue of continuous litigation has no meaning and on that basis keeping the refund pending was legally not correct.

4.3 As regard the period for which the respondent should be granted interest of refund, we find that even though the respondent had filed the refund claim on 01.06.2004 and 25.06.2004 but at that time there was no clear provision for allowing the Cenvat Credit on the inputs to the Wire drawing units therefore, there was no reason for revenue to grant the refund under Rule 5 till the retrospective amendment in Rule 16 was brought i.e. on 13.07.2006. However, after the amendment dated 13.07.2006 in Rule 16 the respondent became eligible for refund of accumulated Cenvat credit under Rule 5 of Cenvat Credit Rules, 2004. Therefore, in our considered view the revenue was supposed to sanction the refund within three months from the date of retrospective amendment i.e. from 13.07.2006 however, the refund was sanctioned on 14.06.2012. Therefore, there is a delay in sanction of the refund after three months from the date of retrospective amendment dated 13.07.2006. Accordingly, we are of the view that the respondent is entitled for the interest only for the period i.e. from the date of three months of 13.07.2006 till the sanction of refund i.e. 14.06.2012. Accordingly, the impugned order is modified to the above extent. The Sanctioning Authority shall recalculate the interest accordingly and grant the same to the respondent.

5. Accordingly, as per our above discussion the revenue's appeal is partly allowed in the above terms.