(2021) 08 CESTAT CK 0012

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 50215 Of 2020

Central Mine Planning And Design Institute Ltd. APPELLANT

Vs

Commissioner Of Central Goods And Service Tax And Central Excise, Bhopal RESPONDENT

Date of Decision : 06-08-2021

Acts Referred:

Central Excise Act, 1944 — Section 11B

Citation : (2021) 08 CESTAT CK 0012

Hon'ble Judges : Rachna Gupta, J

Bench : Single Bench

Advocate : Nand Kishore Kothari, Ravi Kapoor

Final Decision : Dismissed

Judgement

1. Order-In-Appeal No. BHO-EXCUS-001-APP-236-19-20 dated 31.10.2019 has been assailed by the appellant before this Tribunal. The relevant

factual matrix in brief are as follows:

A refund claim of service tax amounting to Rs. 21,89,490/-was filed by the appellant on 10.11.2017 on account of excess payment inadvertently been

made by him due to arithmetical mistake. Said refund was sanctioned by the Original Adjudicating Authority vide order dated 7.1.2019. However, no

interest of delayed refund was sanctioned. Resultantly an appeal was preferred before learned Commissioner (Appeals) who vide order dated

29.3.2019 directed the Original Adjudicating Authority to sanction the interest to the appellant. In compliance thereof, the interest of Rs.30,593/- was

sanctioned vide order dated 16.8.2019. Since the interest was not sanctioned from the date of application that the appeal was preferred before

Commissioner (Appeals) who has upheld the said Order-in-Original rejecting the appeal. Being aggrieved the appellant is before this Tribunal.

2. I have heardÂ Shri Nand Kishore Kothari, learned Counsel for the appellant and Shri Ravi Kapoor, learned Authorised Representative for the

Department.

3. It is submitted on behalf of the appellant that Authorities below have wrongly added the time during which the deficiency memo was issued to the

appellant and was replied by him. The interest would have been sanctioned from the date of application i.e. with effect from 10.11.2017 in terms of

section 11B of Central Excise Act. The said statutory provision has not been complied with. Therefore, order under challenge is prayed to be set aside

and appeal prayed to be allowed.

4. Per contra, it is submitted on behalf of the department that though the application for refund was filed on 10.11.2017 but the same was incomplete

due to which deficiency memo was issued to the appellant. The said deficiency could finally be removed by the appellant on 14.07.2018. Hence, there

is no infirmity committed by Authorities below for sanctioning interest with effect from 14.07.2018. The appeal is accordingly, prayed to be dismissed.

5. After hearing the parties and perusing the record, I observe and hold as follows:

There is no denial on part of the appellant that the application filed by him under section 11B of Central Excise Act for claiming the refund was

immediately returned along with the deficiency memo. The appellant could remove that deficiency not before 14.07.2018. Accordingly, I am of the

opinion that said application was complete and proper only on 14.07.2018, to be called as application under section 11B of Central Excise Act, 1944,

hence can be considered as being filed only on 14.07.2018. Therefore, I do not find any infirmity in the order under challenge where Commissioner

(Appeals) has relied upon the decision of Tribunal Mumbai in the case of State Bank of India vs. Commissioner of Service Tax, Mumbai I reported in

[2014 (34) STR 579 (Tri-Mum)]. Resultantly, the order under challenge is hereby upheld and appeal is hereby dismissed.

(Pronounced in the open Court on 06-08-2021)

