(2021) 03 CESTAT CK 0092

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 313 Of 2012

Cipla Ltd. APPELLANT

Vs

Commissioner Of Central Excise, Raigad RESPONDENT

Date of Decision : 09-03-2021

Acts Referred:
Central Excise Act, 1944 — Section 11B
Central Excise Rules, 1944 — Rule 233B

Citation : (2021) 03 CESTAT CK 0092

Hon'ble Judges : S. K. Mohanty, J;P. Anjani kumar, Technical Member

Bench : Division Bench

Advocate : Rajesh Ostwal, Nitin Ranjan

Final Decision : Allowed

Judgement

1. This appeal is directed against the impugned order dated 30.11.2011 passed by the Learned Commissioner (Appeals), Central Excise, Mumbai. Vide the impugned order, the lower authority has upheld the adjudication order and rejected the appeal filed by the appellant on the ground that the refund application filed under Section 11B of the Central Excise Act, 1944 was barred by limitation of time, being filed beyond the prescribed time frame of one year.

2. Heard both sides and perused the records.

3. We find that the appellant vide letter dated 05.11.2007 (received by the department on 07.11.2007) had specifically informed that it is paying the disputed duty under protest and the reason for such protest payment was also indicated therein. Further, we also find that the appellant had specifically mentioned such protest payment in the periodical returns filed before the jurisdictional Central Excise authorities. Insofar as Section 11B ibid is concerned, the second proviso contained therein clearly mandates that limitation of one year shall not apply, where any duty and interest has been paid under protest. The documents available on record clearly show that the disputed duty in this case

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was paid by the appellant under protest. Thus, as per the provisions contained in Section 11B ibid, the time limit of one year should not be applicable for claiming the refund amount paid under protest. We find that the Learned Commissioner (Appeals) has referred to the provisions of Rule 233B of the erstwhile Central Excise Rules, 1944 to deny the refund benefit in favour of the appellant. The said rule was not in existence at the material time and the case of the appellant was governed under the provisions of the Central Excise Rules, 2002. In the rules in vogue, no specific format was prescribed for lodgment of payment of duty under protest. Further, reference to Part III in Paragraph 3.2 of Chapter 13 in the CBEC's Central Excise Manual of Supplementary Instructions relied upon in the impugned order does not apply to the facts of the present case inasmuch as in the Rules of 2002, no specific provisions have been made or incorporated in the manner or the mode of filing of the protest letter regarding payment of duty.

4. In the circumstances of the present case, since the appellant had paid duty under protest, which is evident from the available records, we are of the considered view that denial of refund benefit on the ground of limitation will not stand for judicial scrutiny.

5. Therefore, we do not find any merits in the impugned order. Accordingly, by setting aside the same, we allow the appeal in favour of the appellant, with consequential benefit of refund.

(Operative portion of the order pronounced in the open court)

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