(2021) 03 CESTAT CK 0057

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 40055 Of 2020

M/s. Aar Aar Metal Refinery APPELLANT

Vs

Commissioner Of G.S.T. And Central Excise RESPONDENT

Date of Decision : 22-03-2021

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

Citation : (2021) 03 CESTAT CK 0057

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Advocate : M. Karthikeyan, L. Nandakumar

Final Decision : Dismissed

Judgement

1. This appeal is filed by the assessee against the Order-in-Appeal No. 310/2019 (CTA-I) dated 03.10.2019 passed by the Commissioner of G.S.T. and Central Excise (Appeals-I), Chennai.

2. The relevant facts required for consideration, are as under:

(i) The Headquarters Preventive Wing of the Central Excise Commissionerate conducted investigation wherein it was revealed that the appellant was manufacturing and clearing ingots bearing name/marking of another person/unit without payment of Excise Duty.

(ii) The goods manufactured by the appellant bore the markings "R K I" belonging to another company namely, M/s. R.K. Metals Industry.

(iii) For the above reason, SSI exemption availed by the appellant was sought to be denied vide Show Cause Notice No. 75/2006 dated 03.10.2006.

(iv) It is not in dispute that during investigation, the appellant had paid an amount of Rs. 4,00,000/- (vide challan dated 14.08.2006 for Rs.2,00,000/-, another challan dated 05.09.2006 for Rs. 1,00,000/- and another challan dated 18.09.2006 for Rs. 1,00,000/-).

(v) In the Show Cause Notice it was proposed to demand Excise Duty of Rs. 28,99,847/- for the period from October 2001 to August 2006 along with interest and penalty.

(vi) The amount of Rs. 4,00,000/- paid by the appellant, as above, was also sought to be appropriated towards the above demand.

(vii) The above demand was confirmed vide Order-in-Original No. 01/2017 dated 09.01.2007, with the result that Rs. 4,00,000/- stood appropriated against the above demand.

(viii) On assessee's appeal, the above demand and appropriation came to be upheld by the First Appellate Authority, with a small variation.

(ix) On further appeal, the CESTAT, Chennai Bench vide Final Order No. 41775 of 2017 dated 21.08.2017 set aside the impugned order thereby allowing the appeal with consequential benefits, if any, as per law.

(x) Based on the above order, the appellant claimed the refund of Rs. 4,00,000/- which is the subject in dispute in this appeal.

3. Shri M. Karthikeyan, Learned Advocate, appeared for the assessee-appellant and Shri L. Nandakumar, Learned Authorized Representative, appeared for the Revenue-respondent.

4. Heard both sides, perused the documents placed on record and have also gone through the various decisions/orders referred to during the course of hearing.

5.1 The crux of the arguments advanced on behalf of the assessee-appellant is that the amount of Rs.4,00,000/- paid during the investigation tantamounts to deposit under protest and as such, the same was not hit by the mischief of Section 11B of the Central Excise Act, 1944 with regard to the time limitation when a refund of the same is claimed.

5.2 In support of his case, Learned Advocate for the appellant would also rely on the following decisions:

(i) M/s. Mafatlal Industries Ltd. v. Union of India [1997 (89) E.L.T. 247 (S.C.)];

(ii) Commr. of Central Excise v. M/s. Advance Steel Tubes Ltd. [2018 (11) G.S.T.L. 341 (All.)];

(iii) The Commr. of Central Excise, Coimbatore v. M/s. Pricol Ltd. [2015 (320) E.L.T. 703 (Mad.)];

(iv) M/s. EBIZ.COM Pvt. Ltd. v. Commr. of Central Excise, Customs & S.T. [2017 (49) S.T.R. 389 (All.)];

(v) Commr. of C.Ex., Chennai-II v. M/s. Electro Steel Castings Ltd. [2014 (299) E.L.T. 305 (Mad.)];

(vi) M/s. ITEL Industries Ltd. v. Commr. of Central Excise, Calicut [2014 (301) E.L.T. 288 (Ker.)];

(vii) Commr. of C.Ex., Bangalore v. M/s. KVR Construction [2012 (26) S.T.R. 195 (Kar.)]

(viii) M/s. Tamil Nadu Ex-Servicemen's Corporation Ltd. v. Commr. of G.S.T. and C.Ex., Chennai [2019 (12) T.M.I. 185 - CESTAT Chennai]

6.1 Learned Authorized Representative for the Revenue while supporting the findings of the lower authorities, would also rely on the decision of the Hon'ble Supreme Court in the case of M/s. Sahakari Khand Udyog Mandal Ltd. v. Commissioner of C.Ex. & Cus. reported in 2005 (181) E.L.T. 328 (S.C.). He also drew attention to mandatory condition prescribed at (ec) under Explanation (B) to Section 11B to stress that the statute itself has granted one year's time to prefer application for refund and hence, any further delay cannot be entertained. Learned Department Representative also contended that the refund claim in the case on hand is not in the normal course but claimed as a consequence of an Order of an appellate forum and hence, the case of the appellant clearly falls within the ambit of 'relevant date' as defined in (ec) under Explanation (B) to Section 11B of the Central Excise Act, 1944.

6.2 He also argued that relevant date as defined in (ec) ibid. clearly carves out an exception from a claim for refund in the normal course, i.e., where refund is not claimed as a consequence of any Appellate Order/(s) specified thereunder.

7. After considering the rival contentions, the undisputed fact that remains is that the refund is claimed as a consequence of CESTAT's Final Order No. 41775 of 2017 dated 21.08.2017 and hence, it is not a normal refund claim. The legislature in its wisdom has inserted (ec) under Explanation (B) to Section 11B with effect from 11.05.2007 with a purpose, thereby carving out an exception from a normal refund claim. This according to me is in the nature of a special provision and hence, any claims made as a consequence of Appellate Order/(s) will have to pass through the rigours of (ec) ibid. When a specific provision is available in the statute covering the specific cases, it is the duty to examine whether a claim falls under such specific provision and if so, then such claims should necessarily comply with the conditions prescribed thereunder.

8. In any case, it is the settled position of law that a provision cannot be interpreted so as to reduce it to a nullity or rather make it otiose.

9. The appellant has, however, taken a ground that they have not received the Final Order passed by the CESTAT while admitting the fact that the Final Order had returned unserved. It is a matter of record that the Registry of the CESTAT would always send by Registered Post, not only the Final Order but even the notices (earlier), to the address furnished in the Appeal Memorandum, which has been meticulously done here also. Hence, they cannot throw blame on the CESTAT when there was no follow up action from their end.

10. The Larger Bench of the Hon'ble Supreme Court in the case of M/s. Mafatlal Industries Ltd. (supra) did not go into the issue of refund claim vis-à-vis (ec) ibid. since, as on the date of the decision, (ec) ibid. was not there in the statute book. Further, in none of the other cases relied upon by the Learned Advocate for the appellant I note that the issue of refund vis-à-vis (ec) ibid. was involved; in some cases, refund was claimed in the normal course and in most other cases, the Hon'ble Courts did not have a chance to interpret the scope and applicability of (ec) ibid.

11. The factual matrix here in the case on hand which is undisputed, is that the refund application was filed with a delay of more than four months in consequence of an Order of this Bench (Appellate Order) and hence, the same is not satisfying the specific provision under (ec) ibid. Hence, I do not see any reasons to interfere with the findings of lower authorities.

12. The appeal is accordingly dismissed.

(Order pronounced in the open court on 22.03.2021)

