(2021) 04 CESTAT CK 0026

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 41381 Of 2019

M/s. Agni Steels Private Limited — APPELLANT

Vs

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

Date of Decision : 12-04-2021

Acts Referred:

Central Goods and Services Tax, 2017 — Section 142(3)
Central Excise Act, 1944 — Section 11, 11B

Citation : (2021) 04 CESTAT CK 0026

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Advocate : S. Venkatachalam, L. Nandakumar

Final Decision : Allowed

Judgement

1. The appellant, aggrieved by the rejection of refund in its first appeal, has filed the present appeal before this forum.

2. Shri S. Venkatachalam, Learned Advocate appearing for the assessee, submitted inter alia as under:

(i) The appellant filed its refund claim vide application dated 01.06.2018 for Rs. 1,52,942/- pertaining to input Service Tax credit which was paid on 26.04.2018 in response to the Spot Memo dated 16.02.2018 issued by the Internal Audit Party;

(ii) That the above was in respect of the Service Tax on consent fees paid to Tamil Nadu Pollution Control Board ('TNPCB' for short) under reverse charge mechanism;

(iii) On the above payment, the appellants were entitled to take input Service Tax credit as it was an input service;

(iv) That post 01.07.2017, with the introduction of the Central Goods and Services Tax ('C.G.S.T.' for short) Act, any amount available as input Service Tax credit could not be taken credit of for want of clarity, etc. This, according to the appellant, prompted them to file refund claim of the amount eligible as input Service Tax credit.

2.2 Learned Advocate for the appellant would also submit that with the onset of C.G.S.T., they should be allowed the refund in cash after the appointed date in terms of Section 142 (3) of the C.G.S.T. Act, 2017.

2.3 Learned Advocate would further contend that in the case on hand, the Adjudicating Authority did not issue Show Cause Notice at all to the appellant and proceeded to pass the Order-in-Original after alleging that one Shri P. Veera Kumar was heard; that the said person was not even from the Accounts Department, who was not having full knowledge of the Service Tax as well as C.G.S.T. Act and that he had appeared in connection with some other issue/ period; that hence, the Order-inOriginal itself suffers from legal infirmity. He would also contend that issuing of Show Cause Notice is not an empty formality. Accordingly, he pleaded to set aside the impugned order whereby the above Order-in-Original has been upheld and to direct the Revenue to grant the refund with consequential benefits.

3.1 Per contra, Shri L. Nandakumar, Learned Authorized Representative appearing for the Revenue, supported the findings of the lower authorities. He also submitted that though Show Cause Notice was not issued, which is not mandatory as per Section 11 of the Central Excise Act, 1944, still the appellant's representative was heard and only thereafter the Order-in-Original came to be passed.

3.2 He would also submit that in terms of Section 11B ibid., on receipt of application for refund, the concerned authority has to verify if the application is in order and only thereafter shall proceed to work out the refund or reject the same and hence, there is no provision for issuing Show Cause Notice at all under the said Section.

4. I have heard the rival contentions and gone through the documents placed on record.

5.1 The Order-in-Original has been passed undoubtedly without the issuance of Show Cause Notice. The Commissioner (Appeals) in the impugned Order has also observed that one Shri P. Veera Kumar appeared before the Adjudicating Authority, but however, both the authorities below are silent as to whether the said person, who is alleged to have been heard, was well-versed with the law and the change in law and whether the said person was authorized by the appellant-company to argue before the authorities.

5.2 It is the basic tenet of our Constitution that "justice should not only be done, but should manifestly and undoubtedly be seen to be done". The above fundamental principle has to be followed along with the principles of audi alteram partem and any Order which creates a doubt as to the manner in which it was passed, has to be held as having passed without adhering to the above principles, which view is also supported by various decisions relied upon by the Learned Advocate for the appellant.

6. For the above reasons, I am of the view that the fundamental principles of law are at stake and the Orders have been passed without affording proper and reasonable opportunities to the appellant. Accordingly, the impugned order is set aside and the matter is remanded to the file of the Adjudicating Authority to pass a fresh order, following the principles of audi alteram partem, especially in the light of the change in law.

7. The appeal is allowed by way of remand.

(Order pronounced in the open court on 12.04.2021)