(2021) 03 CESTAT CK 0105

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 60281 Of 2020

M/s Goodyear India Ltd — APPELLANT

Vs

C.C.E And S.T. Faridabad I — RESPONDENT

Date of Decision : 12-03-2021

Acts Referred:

Central Excise Act, 1944 — Section 11B

Citation : (2021) 03 CESTAT CK 0105

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Advocate : Krati Somani, Vijay Gupta

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the impugned order wherein the refund claim has been rejected by the authorities below holding that the same is barred by limitation.

2. The facts of the case are that during the course of audit in 2014-2015 it was observed that the appellant has not paid Central excise duty against the clandestine removal of scrap and availed cenvat credit in respect of call centre services wrongly, therefore a show cause notice 13.05.2015 was issued wherein demand on account of clandestine removal of scrap and denial of Cenvat credit was confirmed. The said show cause notice was challenged before the Ld. Commissioner (Appeals) who set aside the Order-In-Original, it is pertinent to mention here that when the audit took objection the appellant paid the entire amount of duty as well as demand on account of Cenvat credit but after the order of ld. Commissioner (Appeals) the Revenue challenged the same before this Tribunal and this Tribunal vide order dated 23.05.2017 dismiss the appeal filed by the Revenue. Consequent to that, the appellant filed refund claim the same was rejected holding that same was barred by limitation as although the amount paid by the appellant under protest during the course of investigation itself but when adjudication order passed the same was appropriated therefore,

protest is vacated, in that circumstances, the refund claim filed by the appellant after the order of this Tribunal is barred by limitation. Against the said order, the appellant is before me.

3. The Ld. Counsel appearing on behalf of the appellant submits that the impugned order is violation of principle of natural justice as no opportunity is being granted to the appellant to argue the case. Moreover, Section 11B of the Central Excise Act 1944, itself provide that the limitation prescribed under the Section is not applicable for the refund of an amount deposited under protest. Further, the amount deposited under protest is refundable suo moto on passing of favourable order as per the circular 1053/02/17-Central Excise dated 10.03.2017.

4. On the other hand, Ld. AR supported the impugned order.

5. Heard the parties and considered the submissions.

6. As Section 11B itself states that the limitation of one year as prescribed under Section 11B shall not apply wherein any duty or interest if any paid on such duty has been paid under protest. Further the Master Circular itself has directed to their departmental officer that in all the cases where appellant authority has decided the matter in favour of the appellant, the refund alongwith interest is to be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund irrespective of whether or the order authorities proposed challenged by the department or not?

7. As departmental circular as well as the provisions of law are very much clear that when duty is paid under protest the time limit prescribed under Section 11B is not applicable therefore, the authorities below has misplaced being have not interpreted the law and unnecessarily drag the appellant into litigation up to the level of this Tribunal.

8. In this circumstances, I do not find any merit in the impugned order, the same is set aside, I hold that the appellant is entitled to claim refund along with interest and the same is to be sanctioned to the appellant within 30 days of receipt of this order, the appeal is disposed off in the above terms.

(Dictated and pronounced in the open court)