(2021) 08 CESTAT CK 0112

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 61578 Of 2018

M/s Industrial Equipment Company — APPELLANT

Vs

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

Date of Decision : 17-08-2021

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

Citation : (2021) 08 CESTAT CK 0112

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the impugned order wherein refund claim has been rejected at time barred.

2. The facts of the case are that the appellant is manufacturer of DG sets. As per the business module the appellant is required to deliver the DG sets at the buyer's place. For transportation of DG sets, the appellant recovered certain amount on account of transportation of DG sets but actually paid less amount to the transporters as compared to the amount collected from the buyer during the period 2004-2005. It was alleged that appellant is liable to pay duty on transportation charges over and above the actual payment made to the transporters, therefore, the proceedings were initiated against the appellant and the matter was adjudicated demand on profit earned on transportation charges was confirmed. The said order was challenged before the Ld. Commissioner (Appeals) who vide Order dated 19.01.2010 held that it is only a profit earned on transportation charges and the same cannot be said to be duty. Pursuant to the order of the Ld. Commissioner (Appeals), the appellant filed a refund claim of amount paid during persuasion of the department on 12.04.2012, the refund claim was rejected holding that same is beyond prescribed limit as per section 11B of Central Excise Act 1944, and refund claim was rejected. Against the said order the appellant is before me.

3. The Ld. Counsel for the appellant submits that as Ld. Commissioner (Appeals) vide its Order Dated 19.01.2010 has clearly stated that the amount paid by the appellant is not a duty therefore provision of 11B and time limit prescribed under Section 11B of the Act is not applicable to the facts of this case. To support this contention he relied on the decision of the Hon'ble High Court of Karnataka in the case of Commissioner of C.Ex Bangalore Vs. KVR Construction reported in 2012 (26) S.T.R. 195 (Kar.), Commissioner of C.Ex., Bangalore-III Vs. Motorola India Pvt Ltd reported in 2006 (206) E.L.T. 90 (Kar.) and Union of India Vs. ITC Limited reported in 1993 (67) E.L.T. 3 (S.C).

4. On the other hand, Ld. AR opposed the contention of the Ld. Counsel and submits that the appellant was required to file refund claim Under Section 11B of the Act as they have paid duty and it is admitted fact that refund claim is filed beyond time limit prescribed under Section 11B of the act, therefore, refund claim cannot be entertained. To support this contention, she relied on the decision of the Hon'ble High Court of Gujarat in the case of Ajni Interiors Vs. Union of India application No. 10435 of 2018.

5. After hearing both the sides, the core issue arises that whether the amount for which the refund claim has been filed by the appellant is duty or a deposit ?

6. To ascertain the said fact, the order dated 19.01.2010 passed by the Ld. Commissioner (Appeals) is to be considered, wherein the Ld. Commissioner (Appeals) has held as under

"In the above, it can be concluded that in present case, the appellant was bound to the removal goods to their buyers at the agreed deed. Though, through this activity a profit has been earned, the same cannot be said to be the outcome of appellant's manufacturing activity. Following the case laws has stated above, I hold that such profit is not subject to duty of excise".

7. As it is clear from the order of Ld. Commissioner (Appeals) dated 19.01.2010 that it is not duty, therefore, I hold that provisions of Section 11B of the Act are not applicable to the facts of the case to allege time limit prescribed under Section 11B of the Act is applicable to the facts of this case. The same view was taken by the Hon'ble High Court of Karnataka as well as the Hon'ble Apex Court in the case laws cited by the Ld. Counsel for the appellant as stated hereinabove. The case law relied upon by the Ld. AR is not applicable to the facts of this case as the said case law deals with refund of duty, therefore, I hold that refund claim filed by the appellant is not barred by limitation.

8. Accordingly, the same is entertainable. Therefore, I set aside the impugned order and allow the appeal with consequential relief, if any.

9. The appeal is disposed of in the above manner.

(Dictated and pronounced in the open court)

