(2021) 11 CESTAT CK 0063

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Central Excise Appeal Nos. 60212, 60216, 60217, 60218, 60219, 60220, 60221, 60222, 60223, 60224, 60225, 60226, 60227, 60228, 60229, 60230, 60231, 60232, 60233, 60234 Of 2021

M/s Insecticides India Ltd — APPELLANT

Vs

Commissioner Of C G And S T, Jammu — RESPONDENT

Date of Decision : 23-11-2021

Acts Referred:

Citation : (2021) 11 CESTAT CK 0063

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Advocate : Ajay Jain, Swati Chopra, H. S. Brar

Final Decision : Disposed Of

Judgement

1. This is second round of litigation. In earlier round of litigation, this Tribunal has passed the orders sanctioning the refund claim of the appellants. Instead of implementing the orders of this Tribunal, the authorities below passed the impugned orders rejecting the refund claim of the appellant. These appeals are arising out of order-in-original as follows:

2. As per the orders of this Tribunal, the refund claims of the appellants for education cess and higher education cess were allowed and it was also held in some of the cases that the refund claim/ self credit cannot be restricted in terms of Notification Nos. 19/2008-CE dt. 27.03.2008 and 34/2008-CE dt. 10.06.2008 and the appellants are entitled to claim the refund / self credit of duty paid through PLA in terms of Notification No.56/2002-CE dt. 14.11.2002. Pursuant to the above orders passed by this Tribunal, the appellants approached to the adjudicating authority for sanctioning the refund claim. The adjudicating authority partly sanctioned the refund claim and partly rejected the refund claim. The ld. Commissioner (Appeals) had gone through the orders of the adjudicating authority. Although the same were not challenged by the Revenue before the ld. Commissioner (Appeals) but he sought the recovery of the refund claim earlier

sanctioned by the adjudicating authority. Against the said orders, the appellants are before me.

3. The ld. Counsel for the appellants submits that the orders passed by this Tribunal have never been challenged by the Revenue in appeal before the higher authority, therefore, the orders of this Tribunal have attained finality. Therefore, the authorities below are duty bound to implement the orders of this Tribunal. The impugned orders are in gross violation of judicial discipline. Moreover, the ld. Commissioner (Appeals) has sought the recovery of the refund claim partly sanctioned by the adjudicating authority, which is bad in law.

4. On the other hand, the ld. AR opposed the contention of the ld. Counsel and submitted that this Tribunal has passed the orders relying on the decision in the case of M/s SRD Nutrients Pvt Ltd -2017 (355) ELT 481 (SC). The said decision has been held per in curium by the Hon'ble Apex Court in the case of Unicorn Industries vs. UOI - 2019 (370) ELT 3 (SC). Therefore, relying on the decision of the Hon'ble Apex Court in the case of ACIT Rajkot vs. Saurashtra Kutch Stock Exchange Ltd - 2008 (230) ELT 385 (SC), the judicial decisions act retrospectively, therefore, the ld. Commissioner (Appeals) has rightly ordered for the recovery of refund earlier sanctioned in pursuant of orders of this Tribunal.

5. Heard the parties and considered the written submissions filed by the parties.

6. It is an admitted fact that earlier orders of this Tribunal have been accepted by the Revenue and no appeal has been filed against those orders. In the absence of any challenge to the orders of this Tribunal, the adjudicating authority was duty bound to implement the orders of this Tribunal which they failed to do so. Further, in earlier round of litigation, the orders of this Tribunal were final. The decision relied upon by the ld. AR in the case of ACIT Rajkot vs. Saurashtra Kutch Stock Exchange Ltd (supra) is not applicable to the facts of this case as in that case, the issue was alive by filing the application for rectification of mistake. There is no such case in these matters, therefore, the said decision cannot be applied here. In that circumstance, the ld. Commissioner (Appeals) has exercised the power without any authority of law, the act of the ld. Commissioner (Appeals) is bad in law. The adjudicating authority is directed to implement the orders passed by this Tribunal in earlier round of litigation as chart mentioned herein above within 30 days of receipt of this order.

7. Appeals are disposed of, accordingly.

(Order pronounced in the court on 23.11.2021)

