(2021) 08 CESTAT CK 0120

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 60207 Of 2021

M/s Ishan Industries — APPELLANT

Vs

Commissioner Of CE And ST- Panchkula — RESPONDENT

Date of Decision : 27-08-2021

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

Citation : (2021) 08 CESTAT CK 0120

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

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

2. The facts of the case are that a search was conducted in the premises of the appellant on 02.08.2005, therefore, the appellant made deposit on 16.02.2006 & 20.03.2006 of the impugned amount. Thereafter, a show cause notice was issued to the appellant 30.08.2006 and the matter was adjudicated. The matter has been travelled up to this Tribunal and this Tribunal vide Order dated 20.02.2019 dropped the demand. The order of this Tribunal was uploaded on website on 18.07.2019 and physical order was received by the appellant on 22.07.2019. Thereafter, the refund claim was filed on 03.07.2020. The refund claim was rejected as time barred. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that although the final order was passed by this Tribunal on 20.02.2019 but the same was received by the appellant only on 22.07.2019, in that circumstances, the time limit prescribed under Section 11B of the Act should be "22.07.2019", in that circumstances, it cannot be said that the refund claim was filed beyond the time limit prescribed under Act.

4. On the other hand, the Ld. AR opposed the contention of the Ld. Counsel and

submitted that in this case the refund claim has been filed beyond the time limit prescribed under Section 11B of the Act and any amount paid by the appellant is duty only, therefore, the refund claim is governed by Section 11B of the Act only. In that circumstances, there is no infirmity in the impugned order and the appeal is to be dismissed.

5. Heard the parties and considered the submission.

6. On careful consideration of the submission made by both sides, it is a fact on record that without the copy of the order of this Tribunal, the appellant was not able to file the refund claim before the adjudicating authority for consideration and the order of this Tribunal was uploaded on the website only on 18.07.2019 and it was dispatched to the appellant on 22.07.2019. In that circumstances, I hold that the date of receipt of the order received by the appellant is only 22.07.2019 and the refund claim has been filed on 03.07.2020 which is well within the time limit prescribed under Section 11B of the Act. In that circumstances, the refund claim filed by the appellant cannot be rejected merely time barred.

7. In that circumstances, the impugned order is set-aside and the appeal is allowed. The adjudicating authority shall consider the refund claim filed by the appellant on its own merits and to decide the issue within a month from the date of receipt of this order.

(Order pronounced on 27.08.2021)