(2021) 08 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 51635 Of 2019

M/s. Rajdhani Craft APPELLANT

Vs

Commissioner Central Goods And Service Tax RESPONDENT

Date of Decision : 03-08-2021

Acts Referred:

Central Excise Act, 1944 — Section 11B, 11B(B)(ec), 35E

Citation : (2021) 08 CESTAT CK 0006

Hon'ble Judges : Rachna Gupta, J

Bench : Single Bench

Advocate : Suhrid Bhatnagar, P. Juneja

Final Decision : Allowed

Judgement

1. This appeal is arising out of Order-in-Appeal No.107/2019 dated 18.4.2019. The relevant facts for the purpose are that initially the show cause

notice dated 09.05.2006 was issued to the appellant proposing recovery of Central Excise Duty of Rs.26,91,668/- alongwith Customs duty and interest

thereon in respect of the goods destroyed in the fire. The said demand was confirmed vide Order-in-Original No.50/2006 dated 11.12.2006. An appeal

thereof was filed. In pursuance to the interim order dated 21.02.2007 passed in the said appeal, Rs.1,00,000/- were deposited by the appellant towards

the amount of pre-deposit on 05.04.2007. However, the appeal was rejected vide Order of Commissioner (Appeals) dated 30th April, 2007. Even the

application praying for remission of duty on the goods lost in the fire accident which occurred in the factory premises of the appellant on 13.12.2005

was also disallowed vide Order-in-Original No.13/2007 dated 09.05.2007. The said order was finally set aside by Delhi CESTAT vide Final Order

dated 10 May 2016.

2. However, during the pendency of the said appeal before CESTAT which later was decided on 10.05.2016, the appellant filed a refund claim dated

24.11.2017 for the payments on the exports made during April 2013 to June, 2013 and during January, 2013 to March, 2013. Both the said refunds

were sanctioned vide Order-in-Original No.141/2014 & 142/2014 both dated 30th June, 2014. However, the sanctioned amount was ordered to be

adjusted towards the confirmed demand qua which the appeal was pending before CESTAT. Post order dated 10.05.2016 Revenue filed an appeal

before Honâ??ble High Court of Rajasthan, Jaipur Bench. The same was dismissed vide Order dated 06.09.2017.

3. It is thereafter that the refund application for Rs.481889/-(inclusive of Rs.1,00,00/- paid as pre-deposit) was filed by the appellant on 24.11.2017.

The said refund has been sanctioned vide order No.26 of 10th January, 2018. The said order has been reviewed to hold that the sanction of refund of

Rs.3,81,889/- (the

amount as was already deposited) is not justified for it not being filed within one year of the Final order of CESTAT dated 10.05.2016. The

Department, however, has filed an appeal under Section 35 E of Central Excise Act, 1944 in respect of the Review Order No. 26 of 11.04.2018. The

said appeal has been allowed vide the Order holding that the refund sanctioned vide Order-in-Original of 10 January, 2018, as such is erroneous and

directing the recovery of the said amount from the appellant. Being aggrieved the appellant is before this Tribunal.

4. I have heard Shri Suhrid Bhatnagar, learned Counsel for the appellant and Shri P. Juneja, ld. D.R. for the Department.

5. It is submitted on behalf of the appellant that the instant appeal relates to the limitation of filing the refund claim as a consequence of judgment or

order of appellate authority, Tribunal or any Court where the duty was coercively recovered by adjustment of refund. It is impressed upon that such

payment may be treated as the â??payment under protestâ??. Learned Counsel has laid emphasis upon the order passed by this Tribunal in similar

circumstances in the case of Ahlcon Parentals (India) Ltd. vs. Commissioner, CGST, Alwar, the final order No.50097/2020 dated 10th January, 2020.

It is submitted that since the payment was under protest, section 11B has wrongly been invoked to hold the refund as being barred by time. The order accordingly, is prayed to be set aside and appeal is prayed to be allowed.

6. Per-contra ld. DR has submitted that the appeal of the appellant against confirmation of demand and against denial of remission was decided in

favour of the appellant by CESTAT vide Order dated 10.05.2016. Since this order entitled the appellant to claim refund, the refund claim should have

been filed before 9th May, 2017. The Refund application since has been filed on 24.11.2017, it is definitely beyond a period of one year as is mandated

under section 11 B of Central Excise Act, 1944. As such, there is no infirmity, the appeal is, accordingly, prayed to be dismissed.

7. After hearing the parties and perusing the record, the considered opinion of mine is as follows:-

The moot question to be adjudicated is as to whether the refund claim as was filed on 24.11.2017 is hit by the time limit prescribed under Section 11 B

of Central Excise Act. The Section 11 B talks about the refund of duty and requires that application for refund of such duty has to be made within a

period of one year from the relevant date. Relevant date has been defined in the Section itself under sub-clause 5 (B).

8. From the facts on record, it is apparent that though initially a duty of Rs.25,25,253/- was proposed to be recovered from the appellant vide a show

cause notice dated 9th May, 2006 and that it got confirmed by the adjudicating authorities of the Department. Even the application for remission of

duty on the goods lost in the fire in appellantâ??s premises was disallowed by the authorities below. But both these decisions were challenged before

this Tribunal and vide Final Order No.51816-51817/2016 dated 10th May, 2016. The demand of duty was set aside and remission of duty on goods lost

in fire was also allowed.

9. Prior to this order was filed, the request for refund of Rs.2,82,501/- + Rs.99,388/- on exports made during April 2013 to June 2013 and January,

2013 to March, 2013 respectively, was filed by the appellant. The refund was sanctioned but was ordered to be adjusted towards the confirmed

demand. Since subsequently, this Tribunal vide Order of 10.05.2016 has set aside the demand against which the aforesaid refund was ordered to be

adjusted. Definitely, the appellant became entitled to claim the said refund post the said order of CESTAT, however, admittedly, prior the expiry of

period of one year from 10.05.2016. The Revenue filed an appeal against the order of setting aside the demand before Honâ??ble High Court of

Rajasthan who vide order dated 06.09.2017 has dismissed the appeal. Apparently and admittedly the refund claim has been filed post this dismissal of

Revenueâ??s appeal, on 24.11.2017. So seen from the angle of time bar issue as invoked by the Department, it is held that the period of one year as

per section 11B (B) (ec) is the date of decision of Rajasthan High Court and not the date of decision of Final Order of CESTAT, the appeal before

High Court of Rajasthan being the one filed by the Department. Hence, the findings of authority below are absolutely wrong.

10. Otherwise also, the another apparent fact is that the order dated 30.06.2014 of adjusting the paid amount towards the sanctioned demand was

passed during the pendency of the assesseeâ??s appeal challenging the said demand before CESTAT and the demand stands set aside by CESTAT.

Such act of the Department cannot be denied to be the coercive manner and since the payment was made pursuant to the direction of Departmental

Authorities the same cannot be considered as voluntary payment and has to be treated as payment under protest. I rely upon the decision of Sriram

Food Industries reported as 2003 (152) ELT 285 (Guj.). Section 11B proviso is clear enough to say that the limitation of one year shall not apply where

any duty/interest on such duty has been paid under protest. Seen from this angle also, the invoking of limitation issue is held to be absolutely unjustified

on the part of authorities below.

11. As a consequence to entire above discussion, the order under challenge is hereby set aside. Appeal stands allowed.

[Order pronounced in the open Court on 03.08.2021]

