(2021) 09 CESTAT CK 0024

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 40463 Of 2021

M/s. Sanmar Matrix Metals Limited — APPELLANT

Vs

Commissioner Of G.S.T. And Central Excise — RESPONDENT

Date of Decision : 03-09-2021

Acts Referred:
Central Excise Act, 1944 — Section 11B, 11B(5)

Citation : (2021) 09 CESTAT CK 0024

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Brief facts, as could be gathered from a conjoint reading of the statement of facts presented before this forum and the Order-in-Original, are that the appellant filed an application for refund of Rs.25,73,971/-consequent to the Order of the Tribunal passed in Final Order No. 43180 of 2018 dated 10.12.2018, vide letter dated 14.08.2020; that the CESTAT's Order was against Order-in-Appeal No. 222/2012-TRY dated 25.09.2012 whereby Order-in-Original No. 04/2012 dated 30.03.2012 passed by the Adjudicating Authority demanding the wrongly availed input credit was upheld. Vide separate proceedings, the application for rebate claimed by the appellant on export was processed and vide Order-in-Original No. 30/2014-R dated 06.05.2014 the rebate was sanctioned, but the same was appropriated against the demand that arose in Order-in-Original No. 04/2012 (supra). Thereafter, this Bench vide Final Order (supra) set aside the demand arising out of Order-in-Original No. 04/2012 (supra), consequent to which the rebate appropriated vide Order-in-Original No. 30/2014-R (supra) was to be refunded, but the above request of the appellant was rejected by the Order-in-Original No. 23/2020-R dated 08.09.2020 and the appellant's appeal against the above rejection also having been rejected by the First Appellate Authority, the present appeal has been filed before this forum.

2. Heard Shri V.S. Manoj, Learned Advocate appearing for the appellant and Ms.

Sridevi Taritla, Learned Additional Commissioner (Authorized Representative) appearing for the Revenue.

3.1 Learned Advocate for the appellant would submit that the appellant's claim was for the refund of amount appropriated during the pendency of appeal before the CESTAT, which is nothing but a payment during pendency which tantamounts to an amount paid under protest and that therefore, the limitations under second proviso to Section 11B of the Central Excise Act, 1944 would not apply.

3.2 Learned Advocate also inter alia contended that the Board vide Circular No. 984/08/2014-CX dated 16.09.2014 has clarified that the Department has to refund the pre-deposit based on a simple letter from the person who has made the deposit; that the finding in paragraph number 4.3 of the Order-in-Original No. 23/2020-R (supra) that the amount adjusted cannot be treated as deposit, is contrary to the settled principles; that once the appropriation is made during the pendency of appeal against an amount before the higher appellate forum, the same shall be treated as pre-deposit and therefore a simple letter is sufficient; that the Commissioner of Central Excise (Appeals) failed to appreciate that Section 11B of the Central Excise Act, 1944 provides for claim of refund of duty and interest, if any paid on such duty; that the Commissioner of Central Excise (Appeals) failed to appreciate that Section 35F of the Central Excise Act provides for deposit of duty demanded or penalty levied during the pendency of appeal, etc.

3.3 He also relied on the following judgements, copies of which were also placed during the course of hearing:

(i) M/s. Arunachala Grounder Textile Mills Pvt. Ltd. v. C.C.E., Salem [2012-TIOL-958-HC-MAD-ST];

(ii) M/s. K.V.R. Constructions v. C.C.E., Bangalore [2010 (17) S.T.R. 6 (Kar.)];

(iii) M/s. Indian Oil Corporation v. C.C.E., New Delhi [2010 (256) E.L.T. 232 (P&H)];

(iv) M/s. Binani Cement Ltd. v. Union of India [2013 (288) E.L.T. 193 (Guj.)];

(v) M/s. Hutchisom Max Telecom Pvt. Ltd. v. C.C.E., Mumbai [2004 (165) E.L.T. 175 (Tri. - Del.)];

(vi) M/s. S. & H. Gears Pvt. Ltd. v. Commr. of Cus., Mumbai [2004 (167) E.L.T. 538 (Tri. - Mum.)];

(vii) M/s. Clariant (I) Ltd. v. C.C.E., Mumbai [2004 (172) E.L.T. 488 (Tri. - Mum.)];

(viii) Commr. of Service Tax, Chennai v. M/s. Wardes Pharmaceuticals (P) Ltd. [(2011) 31 STT 47 (Madras)].

4. Per contra, Ms. Sridevi Taritla, Learned Departmental Representative supported the findings of the lower authorities. She also contended that the

application for refund was filed consequent to the order of the CESTAT, which was dated 10.12.2018 whereas, the application for refund was filed on 14.08.2020. She would point out to sub-clause (ec) under Explanation below Sub-Section (5) to Section 11B of the Central Excise Act, 1944 to buttress that since the refund was claimed as a consequence of the order of Appellate Tribunal, the time-limit of one year would apply.

5. I have heard the rival contentions and gone through the documents placed on record as also the judgements referred to during the course of hearing.

6. The undisputed fact is that the refund was claimed consequent to the Final Order of the CESTAT referred to supra and hence, the claim is not a normal refund claim. The legislature in its wisdom has inserted (ec) under Explanation (B) to Section 11B with effect from 11.05.2007 with a purpose, thereby carving out an exception from a normal refund claim. This, according to me, is in the nature of a special provision and hence, any claims made as a consequence of Appellate Order/(s) will have to pass through the rigours of (ec) ibid. When a specific provision is available in the statute covering the specific category of cases, it goes without saying that any claims shall be examined in the light of the conditions prescribed thereunder. In any case, it is the settled position of law that a provision cannot be interpreted so as to reduce it to a nullity or rather make it otiose.

7. With respect to Sl. Nos. (i) to (iv) of the case-laws referred to by the Learned Advocate for the appellant, it appears that (ec) was not the specific subject matter and hence, factually, the present appeal stands on a different footing. The order in the case of M/s. Hutchisom Max Telecom Pvt. Ltd. (supra) of the Delhi Bench of the CESTAT is dated 12.01.2004, when the above provision was itself not available in the statute and also the orders of the Mumbai Bench of the CESTAT in the cases of M/s. S. & H. Gears Pvt. Ltd. (supra) and M/s. Clariant (I) Ltd. (supra).

8. The application for refund here is filed on 14.08.2020, which is clearly after the prescribed period of one year from the relevant date as prescribed under (ec) of Explanation (B) to Section 11B of the Central Excise Act, 1944 and hence, the appellant does not pass through the rigours of the specific provision under (ec) ibid.

9. Hence, I do not see any justifiable reasons to interfere with the findings of the lower authorities and therefore, the appeal stands rejected.

(Order pronounced in the open court on 03.09.2021)