
(2024) 07 CESTAT CK 1519

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Excise Appeal No. 55583 of 2023

M/s. Sriram Cables Pvt. Ltd.

APPELLANT

Vs

Commissioner of C.G.ST. & Central Excise, Alwar

RESPONDENT

Date of Decision : 05-07-2024

Acts Referred:

Income Tax Act, 1961 — Section 140(4)(a)
Central Goods and Services Tax Act, 2017 — Section 73(5)
Central Excise Act, 1944 — Section 11B, 11BB
Central Excise Rules, 1944 — Rule 9(1A), 173G(1A)

Citation : (2024) 07 CESTAT CK 1519

Hon'ble Judges : Ashok Jindal, Member (J)

Bench : Single Bench

Advocate : G.G. Gupta, Kuldeep Rawat

Final Decision : Allowed

Judgement

Ashok Jindal

1. The appellant is in appeal against the impugned order wherein refund filed by the appellant has been denied by the learned Commissioner (Appeals).

2. The facts of the case are that the appellant is manufacturer of excisable goods namely Insulated Wire, Cable and Copper Wire of Refined Copper. The appellant transferred an amount of Rs.2,88,452/- as transitional credit through TRAN – 1 in the GST regime. During the verification of TRAN-1, it was observed that as per Section 140(4)(a), the taxpayer shall be entitled to take, in is electronic credit ledger the amount of Cenvat credit carried forward in return furnished under the existing law in accordance with the provisions of sub-section(1) and as such there is no provisions contained under the CGST Act, 2017 and Rules made thereunder to transfer PLA balance in the electronic credit ledger. Therefore, the appellant was asked to deposit the said wrongly availed input tax credit equivalent to PLA balance along with interest, and in compliance, the appellant has deposited the excess claimed Rs.2,88,452/- vide debit entry no. 1562 dated

16.02.2009 in their electronic credit ledger and shown in the GSTR-3B for the month of February, 2019 but did not deposit the interest which contravenes the provisions of Section 73(5) of the CGST Act, 2017. Thereafter, the appellant filed a refund claim of Rs. 2,88,452/- on 25.02.2021 in respect of amount pertained to the closing balance in their personal ledger in ER return for June, 2017. The adjudicating authority sanctioned the refund claim on account of unspent amount of PLA holding that refund involves refund of PLA balance which was considered to be deposit and not duty. Therefore, it was held that provisions of Section 11B are not applicable and consequently, it was held that refund claim cannot be held time barred. Revenue challenged the order of the adjudicating authority before the learned Commissioner (Appeals) on the ground that refund claim filed by the appellant is barred by limitation. The learned Commissioner (Appeals) relying on the decision of Commissioner of Income Tax II Vs. Modipon Ltd. in Civil Appeal No 19763 of 2017 vide order dated 24.11.2017 held that the amount deposited in PLA is duty, therefore, provisions of Section 11B of Central Excise Act, 1944 are applicable to the facts of the case and refund claim filed by the appellant is barred by limitation. Against the said order, the appellant is before me.

3. Learned counsel appearing on behalf of the appellant submits that for deposit in the PLA provisions of Section 11B are not applicable and unutilized PLA balance is not hit by limitation. He relied upon the decision of this Tribunal in the case of Huhtamaki India Limited Vs. Commissioner of Central Excise & ST, Daman vide Final Order No. A/10263/2023 dated 07.02.2023 wherein it was held that for refund of unutilized PLA balance is not hit by limitation provided under Section 11B of Central Excise Act, 1944 and same is to be treated as deposit. Therefore, he prayed for impugned order to be set aside.

4. On the other hand, Learned Authorized Representative oppose the contention of the appellant and heavily relied on the impugned order and the judgment of the Hon'ble Apex Court in the case of Modipon Ltd. (supra)

5. Heard both sides and considered the submissions.

6. I have gone through the decision of Hon'ble Apex court in the case of Modipon Ltd. (supra). In the said case also the Hon'ble Apex Court has not held that any amount lying pending in PLA is a central excise duty. In fact, the Hon'ble Apex Court itself has held that same is a deposit which can be utilized later on for payment of Central Excise Duty. As the learned Commissioner (Appeals) has misinterpreted the decision of the Hon'ble Apex Court in the Modipon Ltd. (supra), therefore the said decision is not applicable to the facts of this case and further this Tribunal in the case of Huhtamaki India Limited (supra) observed as under:

4. I have carefully considered the submissions made by both the sides and perused the record. The limited issue falls for my consideration is that whether in respect of refund of unutilized PLA balance, limitation of one year, provided under Section 11B is applicable from the date of deposit in PLA. I find that the deposit

in PLA is not a payment of duty whereas it is an advance deposit for future payment of duty. The PLA balance takes the color of duty only when duty payable is debited from the PLA balance. In the present case, undisputedly the PLA balance for which refund is sought for is out of advance deposit made by the appellant in PLA and out of that unutilized balance has been claimed as refund. Therefore, limitation of Section 11B is not applicable. This Tribunal considered identical issue in the case of Sun Pharmaceutical Industries Limited (supra) and passed the following order:-

4. I have carefully considered the submission made by both sides and perused the records. I find that the Learned Commissioner (Appeals) rejected the refund claim on the ground that the limitation under 11B is applicable according to which the claimant should have filed the refund within the one year from date of payment. I find that in case of PLA balance, it is not deposited as a duty but it is deposited as advance towards the duty. The PLA Amount takes the color of excise duty only when it is utilized for payment of duty on clearance of excisable goods. The unspent balance of PLA is only advance not duty therefore, Section 11B is not applicable. This tribunal in various decisions held as under:-NAVDEEP PACKAGING INDUSTRIES – 2007 (210) ELT 417 (TRI. MUMBAI)

“Heard both sides.

2.The issue involved is whether the refund of unspent PLA balance is covered under Section 11B of the Central Excise Act, 1944. The Id. Commissioner (Appeals) in his order has considered the provisions of Rule 9(1A) read with Rule 173G(1A) of the Central Excise Rules, 1944 which provides for withdrawal of amount from PLA by the Commissioner and the said power of Commissioner has been delegated to Assistant/Deputy Commissioner of Central Excise. The contentions of the Id. Consultant for the appellant is that Section 11B of Central Excise Act, 1944 applies for refund of duty. This is not disputed by the Commissioner (Appeals). However, referring to clause (b) of the proviso to subsection (2) of Section 11B, the Commissioner records that unjust enrichment shall not apply to refund of unspent PLA balance, but at the same time he also records that he does not mean that the unspent PLA balance is duty. He has recorded that the said provision has been incorporated as an abundant precaution to ensure that even by mistake, the provision of unjust enrichment is not applied for such refund. He also records that since there is a specific provision for refund of PLA balance under Rule 9(1A) and 173G(1A) of the said Rules, therefore, such refund would be squarely covered under the said Rules and not under Section 11B of the Central Excise Act, 1944. which applies only for refund of duty. He has, therefore, recorded that the provisions of Section 11BB of the Central Excise Act, 1944 granting interest for delayed refund of duty is not attracted in the present case.

3.After hearing, perusal of the records and relevant provisions as mentioned above, I do not find any legal infirmity in the Order passed by the Commissioner (Appeals) so far as the applicability of Rule 9(1A) and Rule 173G(1A) of the

Central Excise Rules, 1944, is concerned. The appeal filed by the appellant is, therefore, dismissed.”

JAY SHREE TEA & INDUSTRIES LTD – 2005 (190) ELT 106 (TRI.-KOLKATA)

“3. Ld. JDR supports the impugned order. A clarification was issued by the Board regarding refund of balance in PLA Account. The matter was examined in consultation with the Ministry of Law and it was advised by the Ministry that the amount in question may therefore be refunded to the applicant. CBE & CE No. 202/24/72-CX.6, dated 6-1- 1973. The PLA is deposited by the party is adjusted from time to time and as such an amount in PLA which remain unutilized belonging to the party for which the Department has no claim and the limitation has no application on such deposit. The Rule 173G (1A) deals with the procedure to be followed by the assessee for withdrawal of money from PLA is as under :- “Where an assessee keeping an account-current under subrule (1) makes an application to the [Commissioner] for withdrawing an amount from accountcurrent, the [Commissioner] may, for reasons to be recorded in writing permit such assessee to withdraw the amount in accordance with such procedure as the [Commissioner] may specify in this behalf.”

It is clear that for withdrawing an amount from such account-current only requires a permission from the Commissioner concerned. Neither the law of limitation nor the theory of unjust enrichment is applicable on such deposit. It is the money belonging to the appellant and has a right to withdraw it. There is a distinction between the amount appropriate towards duty and amount deposited for payment of a duty. In a former case duty which has only been levied and paid evidently becomes the property of the Government and no person would be entitled to get it back unless there is a provision of law to enable that person to get the duty already appropriated back from the State or the Government. In the latter case, however, when an amount has been deposited to be appropriated thereafter towards duty which may fall due there having no appropriation, the property in money does not pass to the Government unless the goods are cleared and the duty is levied. In present case the money deposited in PLA cannot be utilised due to withdrawal of Central Excise duty on Package Tea and Tea including Tea waste. The money belongs to the appellant over which the Department has no claim. The appeal deserves to be allowed. I therefore allow the appeal with consequential benefit to the Appellant.” BIJALIMONI TEA ESTATE – 2007 (215) ELT 63 (TRI.- KOLKATA)

“Ld. Counsel appearing for the appellants has submitted that there is only limited issue in these appeals to examine whether un-utilised deposit in PLA can be refunded to the depositor or not and whether such deposit is covered by Section 11B of the Central Excise Act, 1944.

2. Facts of the case throws light that the appellants had made deposit of Rs. 50,000/- (Rupees Fifty thousand only) on 31-12-02 in United Bank of India (UBI), Siliguri towards discharge of the duty payable for removal of excisable

goods. On 28-2-03, there was an un-utilised deposit amount of Rs. 14,251/- to the credit of the appellants and when the appellants made an application for refund of such amount by virtue of exemption of duty on Tea & Tea Waste w.e.f 1-3-03, the claim of the appellants was denied.

3. Ld. DR for the Revenue submitted that if any refund of duty is claimed under Central Excise Act, 1944, due process of law as required under Section 11B of Central Excise Rules, 1944, should be followed and the authorities have rightly rejected claim for the appellant. Meeting to such point, the Id. Counsel has submitted that the Central Board of Excise & Customs has already issued instruction vide F. No. 202/24/72-CX. 6, dated 6-1-78, in consultation with the Ministry of Law to the effect that un-utilised amount in PLA is refundable to the appellants and relying on this instruction, the appellant submitted that this Bench has already decided such matter in the case of Jay Shree Tea & Industries Ltd. v. Commissioner of Central Excise, Kolkata reported in 2005 (190) E.L.T. 106 (Tri.-Kolkata).

4. On the basis of the above decision, the appellants cannot be denied of justice and cannot be un-equally treated under law. It is judicial discipline that demands that unless that order of this forum is stayed by higher Courts or reversed by any such Court, order of this forum shall prevail and that should be followed unhesitatingly. I am inclined to agree to uphold majesty of law and follow judicial discipline and allow the appeal since the issue is no more res integra.

5. Both the appeals are allowed." In view of the above decision along with board circular dated 06.01.1973 the appellant is entitled for the refund of PLA balance and limitation provided under Section 11 B is not applicable.

5. As regard the decision cited by Learned AR in the case of Valson Polyester Ltd (Supra) on careful reading of the said decision I find that the said decision was passed without considering the earlier decisions of this Tribunal as cited above and also the board circular was not considered in the said judgment. Therefore, the Valson Polyester Ltd is not a good law and same is distinguished.

6. As per above discussion and finding, impugned order is set aside and appeal is allowed with consequential relief, if any, in accordance with law.

5. In view of the above decision of the Tribunal, which is on identical facts and issue, the issue is no more res-integra. Accordingly, the impugned order is set-aside and the appeal is allowed with consequential relief.

7. Following the decision of this Tribunal in the case of Huhtamaki India Limited (supra), I hold that the provisions of Section 11B are not applicable for deposit lying in PLA account for refund and same is to be treated as deposit.

8. In view of that I set aside the impugned order and allowed the refund of the appellant. In these terms, impugned order is set aside and appeal is allowed with consequential relief, if any.

[Dictated and pronounced in the open Court]