(2024) 02 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No.85266 Of 2014

M/S. Western Coalfields Ltd — APPELLANT

Vs

Commissioner Of Central Excise, Nagpur — RESPONDENT

Date of Decision : 08-02-2024

Acts Referred:
Central Excise Act, 1944 — Section 11B, 11B(2), 12A

Citation : (2024) 02 CESTAT CK 0009

Hon'ble Judges : Dr. Suvendu Kumar Pati, Member (J);Anil G. Shakkarwar, Member (T)

Bench : Division Bench

Advocate : Rajeev Kumar Agarwal, Sunil Kumar Katiyar

Final Decision : Allowed

Judgement

Anil G. Shakkarwar, Member (T)

1. Brief facts of the case are that the appellant is registered with the Central Excise and was paying central excise duty. Appellant is engaged in mining of coal. Appellant is a Public Sector Undertaking and is 100% subsidiary of Coal India Ltd. which works under the administrative control of the Government of India, Ministry of Coal. Appellant generally supplies coal to various Electricity Boards. The prices at which the appellant sells coal are notified by Coal India Ltd. On 31.12.2011, Coal India Ltd. enhanced the price of coal and the said enhancement was rolled back with retrospective effect on 31.01.2012. Appellant is having coal mines spread on large geographical area. Wani area is one such area from where coal was dispatched. However, the weighbridge at Wani coal area could not be immediately updated for the roll back of price from where coal was to be sold. During the period from 01.02.2012 to 10.02.2012, appellant cleared coal to M/s. Haryana Power Generation Corporation Ltd. at enhanced price and also paid excise duty on enhanced price. Subsequently, on 20.02.2013, appellant filed claim for refund of Rs.20,82,895/- stating that they had excess paid central excise duty on coal during the said period and the receiver of coal

has not claimed any refund of such higher central excise duty nor has claimed any benefit of Cenvat credit. They have also submitted a copy of Credit Note issued to the buyer extending credit of Rs.20,82,895/- to the buyer and the said Credit Note was issued by the appellant on 15.02.2013. Appellant was issued with a show cause notice dated 17.04.2013 calling upon the appellant to show cause as to why refund claimed by the appellant should not be rejected under Section 11B of Central Excise Act, 1944. On contest, the said show cause notice was adjudicated, through which application for refund was rejected by the original authority, i.e. Deputy Commissioner of Central Excise, Division Chandrapur, with whom the claim for refund was filed. Aggrieved by the said order, appellant preferred appeal before learned Commissioner (Appeals). Learned Commissioner (Appeals) through the impugned order has held that the order passed by the original authority was a reasoned order and the same does not call for any interference. In view of the said finding, learned Commissioner (Appeals) rejected the appeal filed before him. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that Coal India Ltd. is having various subsidiaries and one such subsidiary is South Eastern Coalfields Ltd. He has submitted that similar circumstances were faced by South Eastern Coalfields Ltd. where excise duty was deposited in excess of the required sum consequent to roll back of prices in the year 2012 and the matter had travelled upto this Tribunal and this Tribunal through its order reported at 2017 (349) ELT 303 (Tri.-Del.) has held that the authority should have sanctioned the refund claim and paid either to Consumer Welfare Fund or to the assesse. Such similar views were also expressed by the Principal Bench of this Tribunal in final order No. 86518/2017 dated 07.09.2017 in the case of South Eastern Coalfields Ltd. vs. CCE, Bhopal and the matter was remanded to original authority. He has submitted that in compliance of final order No. 86518/2017 dated 07.09.2017 (supra), the original authority, Deputy Commissioner of Central Excise & CGST, Division Katni, has sanctioned refund to South Eastern Coalfields Ltd. He has submitted that on similar lines, the appellant was also entitled for refund applied for.

3. Learned AR for Revenue has submitted that the appellant was called to produce cost sheet of the cost of production of electricity and by the purchaser of the goods and the same was not submitted by the appellant. He has further agreed that rejection of claim through order-in-original is not sustainable.

4. We have carefully gone through the record of the case and submissions made. From the order-in-original we note that the original authority has come to a conclusion that the appellant had paid excess central excise duty than due. The said finding is clear from the opening sentence of the last paragraph of the subject order-in-original dated 20.05.2013. However, ultimately the original authority has rejected the claim for refund under the provisions of Section 11B of Central Excise Act, 1944. We find that the said order was found to be a reasoned

order by learned Commissioner (Appeals) through the impugned order. We, therefore, wish to examine the impugned order with reference to the provisions of Section 11B of Central Excise Act, 1944. Relevant part of Section 11B of Central Excise Act, 1944 is reproduced below:-

"11B. Claim for refund of duty and interest, if any, paid on such duty. - (1) Any person claiming refund of any duty of excise [and interest, if any, paid on such duty] may make an application for refund of such duty [and interest, if any, paid on such duty] to the Assistant [Commissioner] of Central Excise [or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [in such form [and manner] as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise [and interest, if any, paid on such duty] in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty [and interest, if any, paid on such duty] had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act :] Provided [further] that the limitation of [one year] shall not apply where any duty [and interest, if any, paid on such duty] has been paid under protest.

Explanation.—[Omitted by the Finance (No. 2) Act, 1980.]

[(2) If, on receipt of any such application, the Assistant [Commissioner] of Central Excise [or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the duty of excise [and interest, if any, paid on such duty] paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty of excise [and interest, if any, paid on such duty] as determined by the Assistant Commissioner] of Central Excise [or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's account current maintained with the [Principal Commissioner of Central Excise or] Commissioner] of Central Excise;

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise [and interest, if any, paid on such duty] paid by the manufacturer, if he had not passed on the incidence of such duty [and interest, if any, paid on such duty] to any other person;

(e) the duty of excise [and interest, if any, paid on such duty] borne by the buyer, if he had not passed on the incidence of such duty [and interest, if any, paid on such duty] to any other person;

(f) the duty of excise [and interest, if any, paid on such duty] borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty [and interest, if any, paid on such duty] has not been passed on by the persons concerned to any other person."

We note that sub-section (2) of said Section 11B has provided that if the Assistant/Deputy Commissioner of Central Excise is satisfied that the whole or any part of central excise duty paid by the appellant is refundable, then such Assistant/Deputy Commissioner is having only two options. One option is to make an order to credit such excess duty to Consumer Welfare Fund and the other option as provided under clause (d) under the first proviso to said sub-section (2) to refund such sum to the assesse. We have already noted that learned Commissioner (Appeals) has agreed with the order-in-original and the order-in-original has found that the amount claimed to be refunded was duty paid in excess of due duty. We also note that the said amount was not credited to Consumer Welfare Fund. We find from the provisions of sub-section (2) of Section 11B ibid that there are only two options with the Assistant/Deputy Commissioner if he/she finds that the refund is due, then either to credit the said sum to Consumer Welfare Fund or pay it to the assessee, i.e. the claimant. We note that the learned Assistant/Deputy Commissioner has not passed an order crediting the said sum to Consumer Welfare Fund. Therefore, the only option left under the said provision of the Act is to pay the same to the claimant. Since Revenue has rejected refund claim after finding that the said sum was paid in excess of due, we note that there is no such provision in Section 11B to reject the claim of refund when it is found that the duty paid is in excess of due duty and, therefore, the impugned order is erroneous. We set aside the impugned order. As earlier held, we find that in the present case, since the sum was not credited to the Consumer Welfare Fund, in our opinion under the said provisions of Section 11B ibid, the only other option is to pay the same to the claimant who is presently the appellant in this case. We, therefore, allow the appeal and direct Assistant/Deputy Commissioner of Central Excise, Chandrapur Division, to pay refund of the claimed amount to the appellant within a period of 30 days from the date of submission of a certified copy of this order by the appellant to the said Assistant/Deputy Commissioner.

5. In above terms, we allow the appeal.

