(2023) 08 CESTAT CK 0005

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 40204 Of 2014

M/S. W.S. Industries (India) Ltd APPELLANT

Vs

Commissioner Of Central Excise RESPONDENT

Date of Decision : 02-08-2023

Acts Referred:

Citation : (2023) 08 CESTAT CK 0005

Hon'ble Judges : Sulekha Beevi C.S., Member (J);Vasa Seshagiri Rao,Member (T)

Bench : Division Bench

Advocate : P.C. Anandh, Rudra Pratap Singh

Final Decision : Allowed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the appellant had filed a refund claim for refund of Rs. 8,42,001/- in terms of Notification No. 41/2007-st dated 06.10.2007. A Show Cause Notice dated 11.05.2010 was issued proposing to reject the refund claim. After due process of law, the original authority sanctioned refund of Rs.4,21,790/- and rejected the refund of balance amount. Against this, the appellant filed an appeal before the Commissioner (Appeals) and vide Order–in-Appeal dated 08.10.2013, the Commissioner (Appeals) upheld the order in original, which sanctioned only Rs.4,21,790/-. The appellant did not file any appeal against this order.

2. Meanwhile, the department also filed an appeal before the Commissioner (Appeals) against the sanction of refund of Rs.4,21,790/- by the original authority. The Commissioner (Appeals) vide Order-in-Appeal dated 29.10.2013 set aside the order in original sanctioning refund of Rs. 4,21,790/- and held that the entire refund claim has to be disallowed. The department appeal was thus allowed by the Commissioner (Appeals). Aggrieved by such order, the appellant is now before the Tribunal.

3. The Learned Consultant Shri P.C. Anand appeared and argued for the appellant. It is submitted that once the Commissioner (Appeals) upheld the order passed by original authority, he could not have set aside the same. Once the order has been upheld, the same merges with the order passed by original authority and the Commissioner (Appeals) cannot further set aside the same. That therefore the impugned order passed by Commissioner (Appeals) has to be considered as non-est. It is prayed that the appeal may be allowed.

4. The Learned Authorized Representative Shri Rudra Pratap Singh appeared and argued for the department. It is submitted that Department had also filed an appeal before the Commissioner (Appeals) against the order of sanctioning a part of the refund claim. However, prior to the order impugned in this appeal, the Commissioner (Appeals) had considered the appeal filed by the appellant and upheld the sanction of part of the refund claim. The Commissioner (Appeals) after hearing the department appeal, has considered other grounds to hold that the entire refund claim is to be rejected. The Learned

Authorized Representative prayed that the appeal may be dismissed.

4. Heard both sides.

5. The appellant is aggrieved by the order passed by Commissioner (Appeals) who has set aside the order-in-original sanctioning part of the refund claim. To appreciate the facts, the date chart as below would be helpful.

i

Appellant filed refund claim for Rs.8,42,001/-

30.06.2009

ii

Show Cause Notice was issued as to why the claim should not be restricted from 8,42,001/- to Rs. 4,22,062/-

11.05.2010

iii

Original authority passed order sanctioning refund of Rs.4,21,790/-

30.08.2010

iv

Commissioner (Appeals) passed order upholding the order passed by original authority in the appeal filed by appellant

08.10.2013

v

Commissioner (Appeals) passed order setting aside the order passed by original authority in the appeal filed by department

29.10.2013

6. It can be seen from the above that, the Commissioner (Appeals) instead of hearing both appeals together has heard the appeals separately which has resulted in passing conflicting orders. The order passed by Commissioner (Appeals) in the appeal filed by the appellant is prior to the order passed in the department's appeal. When an order has already been passed upholding the sanction of part of the refund claim, the same authority cannot pass another order setting aside the sanction of entire claim. Such order is ab initio void and non-est. Further the department has not preferred any appeal against the order dated 08.10.2013 and the same has attained finality. Moreover, in the present case, it is seen that the Show Cause Notice is issued proposing to restrict the refund claim to Rs. 4,27,062/- and not proposing to reject the entire claim. For this reason also the impugned order passed so as to reject the entire refund claim is not justified. The relevant part of the Show Cause Notice is reproduced as under:-

4. The assesse are therefore, required to show cause to the Assistant Commissioner of Central Excise, Maduravoyal Division, Chennai IV Commissioner ate C-48, TNHB Building, 2nd Floor, II Avenue, Anna Nagar, Chennai-600 040 within 30 days from the date of receipt of this notice, as to why: a. The said refund claim of Rs.842001/- (Rupees Eight lakhs forty two thousand and one only) should be restricted to Rs. 422062/- vide Notification No. 41/2007 (ST) dated 06.10.2007 as amended by Notification No. 17/2008- ST dated 01.04.2008 and as per Notification No. 17/2009-ST dated 07.07.2009.

7. From the above discussions, we have no hesitation to conclude that the impugned order is not sustainable and requires to be set aside which we hereby do. It is also to be stated that as the order passed by Commissioner (Appeals) dated 08.10.2013 has attained finally, the order passed by original authority dated 30.08.2010 sanctioning a part of the refund claim is restored.

8. In the result, the impugned order is set aside, the appeal is allowed with consequential relief, if any,

