

(2021) 03 CESTAT CK 0016

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 52766 Of 2019

**M/s.KEC International Ltd. @Hash Commissioner Of Central Excise And
CGST, Jaipur**

Date of Decision : 16-03-2021

Acts Referred:

Central Excise Act, 1944 — Section 11B, 11B(1)

Citation : (2021) 03 CESTAT CK 0016

Hon'ble Judges : Rachna Gupta, J

Bench : Single Bench

Advocate : Alok Kumar Kothari, Yashvir Singh

Final Decision : Dismissed

Judgement

1. Present is an appeal against the Order-in-Appeal No. 262 (CRM)/CE/JPR/2019 dated 13.09.2019/ 24.09.2019. The relevant facts for the disposal are as follows:-

2. The applicant was engaged in manufacturing of "Galvanized Transmission & Communication Tower Parts". The appellant filed a refund claim amounting to Rs.3,10,312/- before the Competent Authority on account of the said amount being shown as the closing balance in their current account as on 30 June, 2017. It was mentioned that the said amount of refund was originally deposited in their PLA Account for payment of duty and balance thereof was shown in ER-I Return for the month of June, 2017. The Government, however, observing that since the refund has been claimed on 30 July, 2018 for the cash balance of 30 June 2016 the same appears to be hit by limitation of period of one year. Accordingly, a Show Cause Notice No.7803 dated 26.09.2018 was served upon the appellant proposing the rejection thereof. The said proposal was initially confirmed by Order-in-Original No. 8656 dated 11.10.2018. The appeal thereof has been rejected vide the impugned order under challenge. Being aggrieved the appellant is before this Tribunal.

3. Heard Shri Alok Kumar Kothari, learned Advocate for the Appellant and Shri Yashvir Singh, learned Departmental Representative for the respondent.

4. It is submitted on behalf of the appellant that the amount in question is unutilized balance of PLA accumulated till 30 June, 2017 which has no meaning in GST Era with effect from 1st July, 2017. Because of no further relevance of the said amount, the withdrawal thereof was applied vide an application dated 30 July, 2018. It is mentioned that withdrawal has been rejected under Section 11B. The said Section is not applicable upon the impugned amount, the same being a deposit and not the duty. Order under challenge is, therefore prayed to be rejected. Appeal is prayed to be allowed.

5. It is submitted on behalf of Department that there is no other provision in the Act except Section 11B under which the Department can refund the amount. Period of limitation of one year is prescribed under the said provision. The present application has been filed after a delay of one month. Hence, the Adjudicating Authority below has rightly relied upon the decision of Hon'ble Supreme Court in the case of Collector of Central Excise, Chandigarh vs. M/s. Doaba Co-Operative Sugar Mills reported in 1988 (37) ELT 478 (S.C.). Impressing upon the correctness of the decision, appeal is prayed to be dismissed.

6. After hearing both the parties, I observe that the amount as was prayed to be refunded is admittedly an amount other than the duty or interest which is the subject matter of refund under Section 11B. Keeping in view the same, to my opinion Section 11B should not have been made applicable upon the impugned refund. Simultaneously, I also observe that other than Section 11B, there is no provision under which the Department can refund the impugned amount or which permits the withdrawal of deposits as the one in the present case. I also observe that the impugned Show Cause Notice was issued objecting the application of refund to be barred by limitation. In the given circumstances, there was no other option with the Adjudicating Authority below to follow the mandate of Section 11B (1) of Central Excise Act, 1944. It has already been a settled law that in making claims for refund before the Departmental Authorities an assessee is bound within four corners of the statute and the period of limitation prescribed in Central Excise Act and Rules framed there-under must be adhered to. Accordingly, I do not find any infirmity in the order under challenge. However, apparently and admittedly the impugned amount of Rs.3,10,312/- is not an amount of duty but a deposit by the appellant lying with the Department. In terms of principles of equity, the appellant is entitled for the refund thereof. However, this Tribunal being a quasi-judicial authority has no jurisdiction to appreciate the principles of equity.

7. In view of entire above discussion, the appeal in hand is hereby dismissed. However, the appellant is given the liberty to exercise the alternative civil remedy or the remedy of writ jurisdiction.

[Order pronounced on 16.03.2021]