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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 50646 of 2020 [SM]

[Arising out of Order-in-Appeal No.319 (CRM)/CE/JPR/2019 dated 03/12/2019 passed by the Commissioner (Appeals), Jaipur]

M/s.WMW Metal Fabrics Limited **...Appellant**

VERSUS

Commissioner, CGST, Jaipur-I **...Respondent**

APPEARANCE:

Mr. Sanjay Kumar, Advocate for the Appellant
Mr.P.Juneja, Authorized Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 09/07/2021
PRONOUNCED ON : 16/08/2021

FINAL ORDER No.51750/2021

RACHNA GUPTA

The order of Commissioner (Appeals) bearing No.319 dated 26.11.2019 has been assailed in this appeal. The appellant herein is engaged a manufacture of Galvanized Transmission and Communication Tower Plants. A refund claim for an amount of Rs.2,01,262/- was filed by the appellant on 29.11.2018 against the cash amount deposited in their PLA account, for payment of duty as shown in their current account on 30th June, 2017 and

was also shown in their ER-1 Return for the month of June, 2017. However, a show cause notice bearing No.9762 dated 31.12.2018 was served upon the appellant proposing rejection of the said refund claim as it appeared to be hit by the limitation of period of one year from the relevant date i.e. the date of account current balance as on 30th June, 2017. The rejection was initially confirmed vide Order-in-Original No.01/2019 dated 23.01.2019. Appeal thereof has been rejected by the Order under challenge.

2. I have heard Shri Sanjay Kumar, learned Counsel for the appellant and Shri P. Juneja, learned Departmental Representative for the Revenue.

3. Learned Counsel for the appellant has mentioned that the Adjudicating Authority below has erred in considering the amount in question to be a duty and thus Section 11B of Central Excise Act, 1944 (CEA) has wrongly been invoked for rejecting the claim on the issue of limitation mentioned in said Section 11B. It is submitted that it was appellant's own money deposited in his PLA Account to which he is any time entitled to withdraw. Subjecting the same to a limitation of one year prescribed under Section 11B of CEA, is absolutely irrational. The order under challenge is, accordingly, prayed to be set aside and appeal is prayed to be allowed.

4. Per-contra, it is submitted by the Department that there is no provision in entire Central Excise Act then said Section 11B which talks about the refund of any amount to the appellant. Hence, the application of the appellant was very much under Section 11B. There is a statutory mandate for such an application to be filed within one year of the relevant date. The date of the closing balance was the relevant date. The application filed in November, 2018 is definitely much beyond the impugned period of one year. There is no illegality nor any infirmity in the order , appeal is prayed to be dismissed.

5. After hearing both the parties and perusing the entire record considered opinion of mine is as follows:-

It is an admitted fact that appellant was having account current/ PLA for payment of duty. It also cannot be disputed that the purpose of such account is that the money deposited by the assessee in such account has to be debited there-from as and when the duty for clearance of goods is required to be paid by the assessee i.e. against a liability that has to reckon in future. Admittedly the closing balance of said PLA account as on 30th June, 2017 was Rs.2,02,162/-. Admittedly as on 30.07.2017 the duty liability of appellant for the impugned period was discharged and the aforesaid amount was appellant's money to be adjusted against any duty liability arising after 01.07.2017. 1st July 2017 has been the date of transition into GST. The aforesaid amount remained unutilized by the appellant. The said closing

balance has also been duly reflected in the ER-1 Return filed by the appellant. These admissions makes it clear that the amount in question was not at all the amount of duty or interest it was rather appellants own amount which either could be utilized by him while discharging his duty liability else the appellant was entitled to get the refund thereof.

6. There is a distinction between the amount appropriated towards duty and amount deposited for payment of a duty. In a former case duty which has been levied and paid subsequently 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 PLA Account to be appropriated towards duty which may fall due in future and there having no appropriation, the property in money does not pass to the Government unless the goods are cleared and the duty is levied and such money lying deposited in PLA cannot be utilized. It shall be the money of assessee.

7. It is also the fact that on 1st July, 2017 the new Act of Goods and Service Tax Act (GST) was rolled down. Section 142 (3) of the said Act permits the refund of any amount other than duty, tax, interest or Cenvat Credit has to be paid to the assessee in cash. Accordingly, I hold that the amount in question was appellant's own money and he was fully entitled to get the refund

of the same that too in cash. This amount cannot been made subjected to any other appropriation. Nor the time limit under Section 11B of CEA can be invoked when such money is sought to be refunded. I draw may support from the decision of this Tribunal, Mumbai Bench in the case of **Fluid Control Pvt. Ltd. vs. CCE Pune-I reported in 2018 (364) ELT 1041 (Tri. Mumbai)** wherein it has been held as follows:-

> *"The limitation prescribed under Section 11B applies to the refund of duty amount. Inasmuch as the lower authorities themselves observed that the amount in question is "duty waiting to be debited", this clearly shows that the same is not duty, in which case, the provision of Section 11B would not apply. Otherwise also I find that the PLA deposits are mere deposit for the purposes of their utilisation in the future and if the same is not in a position to be utilised, the depositor has to be held as owner of the said amount which is required to be refunded to them, in the absence of any limitation prescribed under the Act for such refund."*

8. Hon'ble High Court of Punjab e & Haryana in the case of **Indian Oil Corporation Ltd. vs. CCE reported as 2010 (256) ELT 232 (P & H)** has held that when there was no duty liability of the appellant but some amounts stands deposited by him, the same has to be refunded back to the appellant without raising any issue of limitation. It was specifically held therein that state cannot enrich itself unjustly when no duty was liable to be paid by the appellant. Calcutta Bench also in a decision of **Jay Shree Tea**

& Industries Ltd. Vs. CCE, Kolkata reported as 2005 (190) ELT 106 (Tri.-Kolkata) held as follows:-

> *"It is clear that for withdrawing an amount from such account-current only requires 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."*

9. In view of entire above discussion, it is held that Commissioner (Appeals) has wrongly invoked the Section 11 B of CEA and the concept of limitation embodied in the said section. Order is accordingly, set aside. Appeal stands allowed.

[Order pronounced in the open Court on 16/08/2021]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita