CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

REGIONAL BENCH AT CHANDIGARH

SINGLE MEMBER BENCH

E/Misc/60357/2021, E/ROM/60174/2020 &
E/EH/60183/2020 in Appeal No. E/60446/2018-Ex

(Arising out of Order-in- Original NO.PCH-EXCUS-000-APP-271-2017 dt.2017-2018 dt.22.1.2018 passed by the Commissioner (Appeals), Central Tax, Central Excise & Service Tax, SCO-407-408, Sector-8, Panchkula)

Riba Textiles Limited **Appellant**

Vs.

CCE & ST, Panchkula **Respondent**

Present for the Appellant: Shri Dinesh Verma, Advocate
Present for the Respondent: ShriH.S.Brar, AR

CORAM : HON'BLE MR. ASHOK JINDAL, MEMBER(JUDICIAL)

Date of Hearing:16.12.2021

Date of Decision: 30.12.2021

MISC. ORDER No. 60217-60219/2021

Per: Ashok Jindal

The Revenue has also filed application for early hearing of the application for rectification of mistake. As the said application has already listed today for hearing, therefore, the application for early hearing of the application for rectification of mistake has become infructuous. Accordingly, the same dismissed as infructuous.

2. The Revenue has filed an application for rectification of mistake against Final order dated 7.1.2020 on the ground that this Tribunal has fell in error and there are mistake apparent on the face

of record which were noticed by the applicant. The same is extracted below: -

"**Department Contention:**

While reviewing the Final Order no. A/60015/2020-SM(BR) dated 07.01.2020 the following mistakes apparent on record are noticed:

1) The Hon'ble CESTAT while deciding the instant matter has wrongly relied upon the case of M/s. Sandvik Asia Ltd. vs. CIT Pune-2007 (8) STR 193 (SC) as in this case the Apex Court was dealing with section 214 and 244(1A) of the Income tax Act 1961 as can be seen from para 4 and para 45 of the said judgment. The Supreme Court has allowed interest from the date of deposit as the sections in question allow the same. The relevant section is reproduced:

Section 244(1A) referred to in sub-section (1) is due to the assessee, as a result of any amount having been paid by him after the 31st Day of March, 1975, in pursuance of any order of assessment or penalty and such amount or any part thereof having been found in appear or other proceeding under this Act to be in excess of the amount which such assessee is liable to pay as tax or penalty, as the case may be, under this Act, the Central Government shall pay to such assessee simple interest at the rate specified in sub-section (1) on the amount so found to be in excess from the date on which such amount was paid to the date on which the refund is granted.

2) The Apex Court has held in Para 47 of the judgment as under:-

"47. There cannot be any doubt that the award of interest on the refunded amount is as per the statute provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore the court has to take all relevant factors into consideration while awarding the rate of interest on the compensation."

Here section 35FF of Central Excise Act, 1944 allows interest only after expiry of three months of the orders of the Appellate Authority and not from the date when the said amount was deposited.

3) In the case of M/s. Sandvik Asia Ltd. vs. CIT Pune-2007 (8) STR 193 (SC), the Apex Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be

compensated for the great prejudice caused to it due to the delay in its payment **after the lapse of statutory period**. In the facts of that case, this Court had come to the conclusion that there was an inordinate delay on the part of the Revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue to pay compensation for the same. Here the interest was allowed from the date of deposit as per the section 214 and 244(1A) of the Income tax Act, 1961 whereas nothing has been provided in the Central Excise Act, 1944/ Service Tax Act, 1994 at the relevant time. Rather the Boards circular no.802/35/2004-CX dated 08.12.2004 has allowed interest after 3 months from the passing of the order of the appellate Authority.

4) As far as the rate of interest on delayed refund is concerned, the Hon'ble CESTAT has relied upon the case of UCAL Fuel Systems Pvt. Ltd.2014 (306) ELT 26 passed by single bench of Madras High Court wherein the Hon'ble High Court held that the appellant is entitled to claim interest @ 12% from the date of deposit till the payment of amount. As the party has deposited some amount during investigation and some amount on the order of the Hon'ble CESTAT and there is no express provisions under section 11B/11BB of the Central Excise Act for the payment of deposit made during investigation. Reliance may be placed in the recently passed double bench decision of Delhi High Court in case of M/s. Nino Chaks vs. Commissioner of Customs 2019 (9) TMI 1166 which covers the issue squarely mentioning that interest on amount deposited voluntarily or under coercion during investigation from the date of deposit cannot be granted as there is no provision. However, Delhi High Court allowed interest @6% p.a. from the expiry of 3 months of the CESTAT order.

5) The case of UCAL Fuel Systems Pvt. Ltd.2014 (306) ELT 26 has been wrongly relied upon by the Hon'ble CESTAT. The Apex Court in the case of M/s. Kay Pan Fragrance Pvt. Ltd. 2019 (12) TMI 95 SC has held that orders passed by the High Courts which are contrary to the stated provision of the Act shall not be given effect to by the authorities. Therefore, the decision of Single bench court of Madras HC cannot be relied upon.

6) Further, in the case of M/s. Creative industries Pvt.Ltd.2017 (6) TMI 745, it has been held that granting of interest based on equity is beyond the powers of tribunal. Apex Court has also issued clarification in the case of Gujrat Fluora Chemicals 2017 (51) STR 236 (SC) wherein the SC has stated as reproduced hereunder:

"8. Further, it is brought to our notice that the legislature by the Act No.4 of 1988 (w.e.f.1-4-1989) has inserted section 244A to the Act which provides for interest on refunds under various contingencies. We clarify that it is only that interest provided for under the statute which may be claimed by the assessee from the revenue and no other interest on statutory interest."

In this case the interest was allowed from the date of deposit as per section 214 and 244 (1A) of the Income tax Act, 1961. So, the Apex Court has allowed interest as it was expressly mentioned in the provisions of Income Tax Act, however, nothing has been provided in the Central Excise Act, 1944 or Service Tax Act, 1994.

7) In the Marshall Foundry & Engg. Pvt. Ltd., the learned Judge has not considered the decision in case of ITC Ltd. passed in 2004 as the latest decision always have the persuasive value. Therefore, the court has relied upon the judgment of Sandvik Asia Ltd. (passed in 2006). However, the learned Judge failed to notice that there is another judgment of Apex Court in the case of Union of India vs. Tata SSL Ltd. passed in 2007 relying on the judgment of ITC Ltd. Further in case of Commr of CGST, Mumbai vs M/s. Juhu Beach Resort Ltd.-2019-TIOL-3596-CESTAT-MUM, the Tribunal has allowed the interest for the pre-deposit made pursuant to the order of Tribunal only on the expiry of 3 months from the date of communication of Order as per the section 35FF of Central Excise Act, 1944 (before the Amendment of 2014).

8) The rate of interest on delayed refunds under section 35F/35FF of the Central Excise Act, 1944 has been notified vide Notification no.24/2014-CE dated 12.8.2014 and is fixed @6% per annum.

9) This Hon'ble Tribunal in the case of CCE, Rohtak vs .M/s. Som Flavour Masala Pvt. Ltd., Sonipat, Excise Appeal no.61049 of 2019 vide its Final Order no.60385/2020 dated 2.3.2020 has observed that even if the refund is arising out of order of the Hon'ble CESTAT

such a refund has to strictly governed as per provisions of section 11B and section 11BB. This Hon'ble CESTAT has also observed that party are entitled to interest from the date only after expiry of 3 months from the date of communication of order. The Hon'ble CESTAT relied upon the case of Nino Chaka [2019 (9) TMI 1166] and the Mumbai Bench of CESTAT final order no. A/86832/2019 dated 03.10.2019 in the case of Juhu Resorts.

and prayed that the final order dated 7.1.2020 be rectified.

3. During argument, ld.AR also relied upon the decision of Hon'ble Supreme Court in the case of Assistant Commissioner, Income Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Ltd.-2008 (230) ELT 385 (SC) and submitted that even there is mistake of law which however should be apparent on the face of record which does not need long drawn process of reasoning and can be subject matter of rectification of mistake.

4. It is his submission that the case law of Sandvik Asia (supra) was not applicable to the facts this case and the ratio of the decision in the case of Sony Pictures Network India Pvt.Ltd.-2017 (353) ELT 100079 (kar.) and Ghaziabad Ship Breakers Ltd.-2010 (260) ELT 274 (Tri.-Ahmd.) have not been applied correctly. The order dated 7.1.2020 is to be rectified.

5. Heard Ld.AR and gone through the records placed before me.

6. This Tribunal has passed order allowing the decision in the case of Marshal Foundry (supra) passed by this Tribunal on 28.11.2019, the Ld.AR has not brought on record whether the said order has attained finality or not?

7. Moreover, the ld. A. R. heavily relied on the decision of the Hon'ble Apex Court in the case of Saurashtra Kutch Stock Exchange

Ltd. (supra) wherein the Hon'ble Court defines the phrase "error apparent on face of records" as under

"An error apparent on face of the record means an error which strikes on mere looking and does not need long drawn out process of reasoning on point where there may conceivably be two opinions - Such error should not require any extraneous matter to show its incorrectness and it should be so manifest and clear that no court would permit it to remain on record."

In the application for rectification for mistake, I find that there is no mistake apparent on face of record but by filing this application for rectification of mistake, the applicant is seeking to challenge the merits of the order dated 07.01.2020 to recall the same which is not permissible in law as the same shall amounts to review of its own order.

8. In the absence of any mistake apparent on face of record, the application of rectification of mistake is not entertainable. Accordingly, the application of rectification of mistake is dismissed.

9. The Revenue has also filed miscellaneous application for modification of the application for rectification of mistake in order dated 07.01.2020 passed by this Tribunal to implead the Commissioner, CGST, Rohtak as the respondent in the final order dated 7.1.2020, the appellant has wrongly impleaded the Commissioner, CGST, CE & ST, Panchkula, as the correct respondent should have been the Commissioner of CGST & CE, Rohtak. It is the contention of the applicant that the appellant M/s. Riba Textiles Ltd., Sonepat falls under the jurisdiction of Commissionerate of CGST & CE, Rohtak after 1.7.2020.

10. It is also prayed that the Commissioner, CGST, Rohtak has not been heard in the matter, therefore, the order dated 7.1.2020 be recalled and the Commissioner of CGST, Rohtak should be heard. It was also submitted that the order dated 7.1.2020 *ab initio* bad and *non-est* and prayed that the order be recalled as the order has been passed against the authority of law in the matter and the said order be also recalled.

11. It was also submitted that in the final order No.60413/2020 dated 3.12.2020, in the case of Modern Dairies Ltd. vs. CCE, Panchkula, wherein the provision of Section 35F of Central Excise Act, 1944 has been interpreted by this Tribunal at the time of disposal of ROM application filed by the Revenue.

12. Ld. AR submitted that while filing appeal before this Tribunal in 2018, the Commissioner of Central Excise, Panchkula was named as the respondent in appeal. The appellant fell under the jurisdiction of Commissioner CGST, Rohtak w.e.f. 01.07.2017. As DC, Panipat is not the proper officer having jurisdiction over the appellant from 01.07.2017 which is under the control of CGST Commissionerate Rohtak instead of CGST Commissioner, Panchkula. As from 1.7.2017, the appellant actually fall in the administrative control of CGST, Rohtak., the final order passed by this Tribunal on 7.1.2020 was received by the Commissioner of CGST, Panchkula as respondent. Consequent to the passing of order by this Tribunal, the appellant filed refund on 26.6.2020 with the DC, Division, Panipat who examined the refund application of the appellant and formed view prima facie that it appeared the appellant is outside jurisdiction of office with DC, Division, Panipat, therefore, requested them that the CGST, Rohtak is having control

where the unit is located and certificate issued in the CGST regime, therefore DC division, Panipat is not the proper officer for sanctioning of refund with effect from 1.7.2017, they fall under CGST, Rohtak instead of CGST, Panchkula, therefore, the name of the respondent is not correct, hence, the order dated 7.1.2020 be recalled.

13. On behalf of the appellant/respondent to the application submits that the issue of jurisdiction was never raised at the time of hearing of the appeal nor raised at the time of filing application for rectification of mistake and now the Revenue has come up with new facts and challenged the jurisdiction over the respondent and seeking to challenge the entire proceeding of adjudication in appeal.

14. It his submission that this Tribunal does not have the power to hear at this stage the issue of jurisdiction and the respondent cannot raise the issue by way of fresh ROM application.

15. He further submits that in the application for early hearing E/EH/60183/2020 dated 17.08.2020, the Revenue itself has stated that the appellant/respondent to the application falls under the jurisdiction of Commissioner of CGST, Panchkula with effect from 1.7.2017, therefore, this application filed by this office and in the modification application filed on 6.12.2021, it has been stated that the appellant/respondent to the application fall under CGST, Rohtak with effect from 1.7.2017.

16. Both the above applications were verified by the same Commissioner, CGST, Panchkula. As the contents of both the applications are contrary to each other on this sole ground, the application is required to be rejected.

17. He further submits that the jurisdiction of the appellant/respondent to the application lies with CGST, Panchkula Commissionerate: -

(a) that the respondent has applied for registration under Central Excise Act, 1944 in the financial year 1998 for the status of 100% EOU. The respondent/applicant granted shifting of jurisdiction on specific request of the appellant/respondent to the application from CE Range, Rohtak to CE Range, Panipat vide letter dated 1.6.1988, keeping in view the hardship faced by the appellant due to non-availability of proper communication facilities in the area and also to facilitate expedite export to the unit of the appellant. The appellant was also issued registration in 2009 from the office of Assistant Commissioner, Division, Panipat which falls under the CGST, Panchkula. All correspondence, adjudication and appeal proceedings were handed by CGST, Panchkula. The appellant applied for de-bonding of the factory in 2010, the appellant requested vide letter dated 18.3.2011 in writing that jurisdiction be with remain CE Range Panipat, the Commissioner, Rohtak vide letter dated 13.07.2012 allowed the appellant to remain under the jurisdiction DC Range Panipat instead of DC Range Sonipat. Thereafter, all proceeding were handing over by Panchkula.

(b) It is his submission in another matter of the appellant applied a refund claim consequent to the order dated 10.1.2019 passed by this Tribunal before Divisional Officer o/o the Assistant Commissioner, Central Excise, CGST, Panipat, the Assistant Commissioner has denied the refund which was rejected by the Commissioner (Appeal) Panchkula vide order dated 8.7.2020. Being

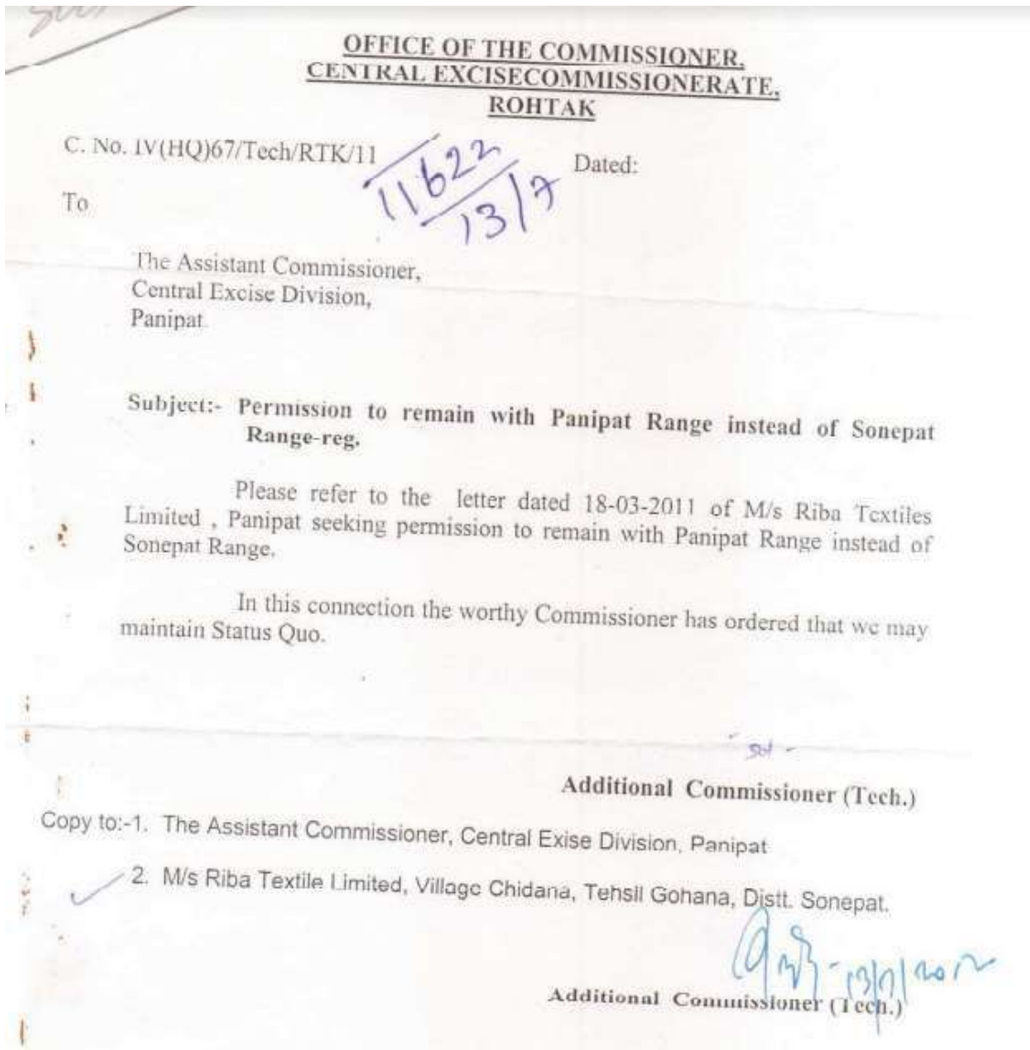
aggrieved the appellant filed appeal before this Tribunal which still pending. All the above proceeding were concluded after 1.7.2017 and Panchkula Commissionerate dealt with the matter which clearly show that The CGST, Panchkula is having the jurisdiction over the appellant.

(c) He further submits that the Government clarified that with effect from 1.7.2017, the jurisdiction under section 142 of the CGST Act. 2017.

(d) It is his submission that the transitional provisions has clarified that the claim of refund initiated, every proceeding of appeal whether before or after appointed day i.e. 1.7.2017 shall be disposed of in accordance with the provisions of existing law. In view of this, this application is required to be dismissed.

18. On consideration of the arguments, I find that by this modification application in the ROM application, the Revenue is seeking to substitute the respondent from Commissioner, Panchkula to Commissioner, Rohtak to say that from 1.7.2017, the appellant falls within the jurisdiction of Commissioner of CGST & Central Excise, Rohtak.

19. I have gone through the order dated 13.7.2012 passed by the Additional Commissioner (Technical) of the officer of Central Excise, Rohtak which is extracted below:-



OFFICE OF THE COMMISSIONER,
CENTRAL EXCISECOMMISSIONERATE,
ROHTAK

C. No. IV(HQ)67/Tech/RTK/11622 Dated: 13/7

To

The Assistant Commissioner,
Central Excise Division,
Panipat

Subject:- Permission to remain with Panipat Range instead of Sonepat Range-reg.

Please refer to the letter dated 18-03-2011 of M/s Riba Textiles Limited , Panipat seeking permission to remain with Panipat Range instead of Sonepat Range.

In this connection the worthy Commissioner has ordered that we may maintain Status Quo.

Additional Commissioner (Tech.)

Copy to:-1. The Assistant Commissioner, Central Exise Division, Panipat

2. M/s Riba Textile Limited, Village Chidana, Tehsil Gohana, Distt. Sonepat.

Additional Commissioner (Tech.)

20. As per the said order, the appellant was within the jurisdiction of CST Range, Panipat instead of CST Range, Sonepat before introduction of CGST.

Section 142 of CGST Act,2017 explains the jurisdiction. For better appreciation, the section 142 of the Act is extracted below:-

Section 142 of CGST Act, 2017 deals with the "Miscellaneous transitional provisions". Clause (3), Clause (4) and Clause (6) reads as follows:

3) Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:
Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(4) Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(6) (a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act;"

21. The said provisions clearly show that every claim of refund, every proceeding of appeal, review or reference filed/initiated whether on or before the appointed day i. e. 1.7.2017 under the existing law which means the jurisdiction for the purpose of every claim of refund, every proceeding of appeal, review or reference before this Tribunal shall be dealt under the provision Central Excise law and not by the provision of CGST law. As per the order dated 13.7.2012, the appellant falls under the jurisdiction of DC Range Panipat and the DC Range, Panipat is under the jurisdiction of the Commissioner of CGST, Panchkula. Therefore, I do not find any merit in the ROM application as well as miscellaneous application for modification in the ROM application filed by the Revenue.

22. Accordingly, all the applications filed by the revenue are dismissed.

(Pronounced in the open court on 30.12.2021)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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