

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II**

Service Tax Appeal No. 50407 of 2021

(Arising out of Order-in-Appeal No. DDN/EXCUS/000/APPL/103/2020-2021 dated 08.09.2020 passed by the Commissioner (Appeals), Central Goods and Services Tax, Dehradun.)

M/s Jai Mateshwaari Steels Pvt Ltd

E-51, Jasodharpur
Industrial Area,
Kotdwar Uttarakhand
246149

Appellant

Vs.

Commissioner, CGST- Dehradun

E-157 & 158, Nehru Colony
E-Block, Nehru Colony,
Haridwar Road, Dehradun,
Uttarakhand-248001

Respondent

APPEARANCE:

Shri Kailash Vaish, Chartered Accountant for the Appellant
Ms. Tamanna Alam, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50165 / 2022

Date of Hearing: 11.02.2022

Date of Decision: 11.02.2022

ANIL CHOUDHARY:

The issue in this Appeal is whether the refund of Cenvat credit as on 30th June 2017, which was filed on 07th March 2019, whether the same have been rightly rejected on the ground of limitation and further observation that as the refund arises by way of self assessment the

same is not entertainable as Section 142(8) sub-Clause b provide for refund arising pursuing to assessment observing that assessment does not include self-assessment.

2. Heard the parties.

3. So far the issue whether assessment includes self-assessment, learned Counsel has drawn attention to Rule 2(b) of Central Excise Rules, 2002, wherein it have been specifically provided- assessment includes self-assessment of duty made by the assessee and provisional assessment under Rule 7. Thus, I find the first objection for refund is bad and against the provisions of law.

4. So far the second objection is concerned as regards limitation, I find Section 142(3) & (8) read as follows:'

"Section 142(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 than 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.

Section 142(8)(b) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provision 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."

4. I find from a plain reading of the provisions quoted hereinabove, Section 142(3) of CGST Act, provides that after the appointed day (30th June 2017) every claim for refund of any duty, tax, interest, etc., under the existing law shall be disposed of in accordance with the provisions of the existing law and any amount eventually accruing to him (assessee) 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 (unjust enrichment) of Central Excise Act.

5. Further, again 142(8)(b) also similarly provides for disbursement of any refund arising pursuant to assessment or adjudication proceedings, except for the provisions of Section 11B(2) of Central Excise Act, which deals with unjust enrichment.

6. Admittedly, in the facts of the present case, no limitation is applicable as provided under Section 11B (one year from the relevant date), due to overriding effect of CGST Act. Accordingly, I find that the appellant is entitled to refund under the provisions of Section 142(3) r/w 142(8) (b) of the CGST Act r/w the erstwhile provisions of Central Excise Act and the Cenvat Credit Rules.

7. Accordingly, this Appeal is allowed and the impugned order is set aside. The adjudicating authority is directed to disburse the amount of refund alongwith interest under the provisions of Section 11BB of the Central Excise Act. It is further directed that the refund with interest should be disbursed within a period of 45 days from the date of receipt or service of a copy of this order on the adjudicating authority.

(Order dictated in the open court)

(ANIL CHOUDHARY)
Member (Judicial)