IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 9611 of 2023

Commissioner, Central Excise, Customs and Service Tax, Rourkela ….. ***Petitioner***

Mr. R. Chimanka, Sr. Standing Counsel

Vs.

M/s. Jindal Steel and Power Ltd. ….. ***Opposite Party***

CORAM:
DR. JUSTICE B.R. SARANGI
MR. JUSTICE M.S.RAMAN

ORDER
04.05.2023

Order No. 03. This matter is taken up through hybrid mode.

2. Heard Mr. R. Chimanka, learned Senior Standing Counsel for the petitioner.

3. The petitioner has filed this writ petition seeking to quash the order No. 12/2022-CX dated 04.03.2022 passed by the Additional Secretary to the Government of India.

4. Learned counsel for the petitioner contended that out of the total demand of Rs.69,98,64,638.00, since deposit has been made to the tune of Rs.65.00 crores, the balance amount of Rs.4,2389,327/- has been erroneously sanctioned in favour of the opposite party, for which the petitioner has approached this Court claiming for re-crediting it in the Cenvat Credit ledger.

5. It appears that the opposite party exported final products on payment of Central Excise duty of Rs. 69,98,64,638/- during the period 01.01.2017 to 31.03.2017, and claimed rebate, vide application dated 14.08.2017, under Rule 18 of the Central Excise Rules, 2002. The Original Authority, vide Order-in-Original dated 10.10.2017 sanctioned the entire amount as rebate.

The aforesaid Order-in-Original dated 10.10.2017 was reviewed by the petitioner department on the ground that duty was paid on CIF value basis instead of the FOB value basis and, therefore, the rebate should be sanctioned in cash only to the extent of duty payable on FOB value basis whereas excess duty paid over and above the FOB value basis should be refunded in the manner it was paid, i.e., by re-crediting in the Cenvat Credit Account. In the appeal filed by the petitioner department, consequently, the Commissioner (Appeals) vide Order-in-Appeal dated 30.10.2018, held that the amount of Rs.4,23,89,327/- was erroneously sanctioned to the opposite party in cash instead of re-crediting in the Cenvat Credit Ledger and, accordingly, set aside the Order-in-Original dated 10.10.2017. In the meantime, a show cause notice dated 31.08.2018 was issued to the opposite party proposing the demand of erroneously refunded amount of Rs.4,23,89,327/-, in cash. Pursuant to the Order-in-Appeal dated 30.10.2018, the show cause notice dated 31.08.2018 was adjudicated by the Original Authority vide the Order-in-Original dated 23.08.2019 confirming the demand along with interest. Equal amount of penalty was also imposed under Section 11AC. The appeal filed by the opposite party was allowed by the Commissioner (Appeals) vide order dated 15.12.2020. The Revision application was filed on the grounds that it is settled law that the rebate of duty was available only in respect of duty paid on FOB value and not any value over and above the FOB value and that additional amount of Rs. 4,23,89,327/- sanctioned erroneously by the Original Authority was to be allowed not as a amount of refund but as a reversal entry because refund/rebate is not admissible and that as per Section 142 (3) of the CGST Act, 2017, every claim for refund filed after the appointed date, i.e. 01.07.2017, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to the Applicant shall be paid in cash and that Commissioner (Appeals) has erred in applying the

aforesaid Section 142 (3) since the disputed amount involved herein relates to the re-credit and not to refund in cash and, as such, the same has to lapse. A written reply dated 22.05.2021 has been filed by the opposite party. Considering all such facts, the Revisional Authority passed the following order:

> *"The Commissioner (Appeals) has also in the Order-in-Appeal dated 30.10.2018 dearly held "8……that refund of duty of Rs. 4,23,89,327/- on Overseas freight value of Rs.33,91,14,613/- has been erroneously sanctioned to the respondent in cash instead of re-crediting to their CENVAT Account, I hold that the Adjudicating Authority has sanctioned the rebate of Rs. 4,23,89,327/- beyond the prescribed law. Therefore, I hold that the impugned order is liable to be set aside." Thus, it was the clear contention of the department before the Commissioner (Appeals) that the differential amount should be refunded by way of re-credit instead of cash and the Commissioner (Appeals) has also, accordingly, held in favour of the department. The Order of Commissioner (Appeals) has attained finality and it is now not open to the department to contend otherwise. Even otherwise, it is settled law that the duty not payable cannot be retained by the Government and it has to be refunded to the person who has paid.*

6. Needless to say, the Commissioner (Appeals) while considering the case also taken into consideration the provisions contained under Section 142 (3) of the CGST Act, 2017 and held that since the application for rebate was filed after the appointed date, i.e., 01.07.2017, the amount which earlier would have been allowed to be refunded by way of re-credit, should now be refunded in cash as per the provisions of said Section 142(3). The Government observed that the view taken by the Commissioner (Appeals) is in line with the judgment of the Gujarat High Court in the case of ***Thermax Ltd. vs. UOI***, 2019 (31) GSTL 60 (Guj.), wherein at paragraph-10 the Gujarat High Court observed as follows:-

> *"10. It is thus eminently clear from the aforesaid observations made in the impugned order that the duty, which was paid by the petitioner, which was otherwise not payable on the exported goods and therefore, rebate of such duty was not admissible in terms of Rule 18 of the Central Excise Rules. However, the duty,*

> *which was paid by the petitioner is held to be treated as voluntary deposit. As per Section 142(3) of the GST Act, every claim for the refund filed by any person before, on or after the appointed day i.e. 01.07.2017 for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, should be disposed of in accordance with the provisions of existing law and any amount eventually accruing to such person should be paid in cash. We are of the considered opinion that in view of this clear provision, the respondent No.2 ought to have directed the sanctioning Authority to refund the amount of the duty refundable to the petitioner in cash instead of credit in CENVAT Account.*

7. In view of such position, this Court finds that there is no infirmity in the order impugned, which requires interference by this Court.

8. Thus, this writ petition merits no consideration and the same stands dismissed accordingly.

(DR. B.R. SARANGI)
JUDGE

Arun

(M.S. RAMAN)
JUDGE