Customs, Excise & Service Tax Appellate Tribunal,
West Zonal Bench : Ahmedabad

REGIONAL BENCH - COURT NO. 3

Excise Appeal No. 897 of 2010

[Arising out of Order-in-Appeal No OIA-113/2010/COMMR-A-/RAJ dated 08.03.2010 passed by Commissioner (Appeal) of Central Excise & ST, Rajkot]

Mid India Power And Steel Limited .... **Appellant**
332, GIDC Estate, Phase-ii, Village-Motirohar, Taluka-Gandhidham, Kutch, Gujarat-370201.

VERSUS

Commissioner of Central Excise & ST, Rajkot .... **Respondent**
Central Excise Bhavan,
Race Course Ring Road, Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE :

Shri Dhaval K. Shah Advocate for the Appellant
Shri S.N. Gohil, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/11934 / 2019

DATE OF HEARING/ DECISION : 15.10.2019

RAMESH NAIR :

The brief facts of the case are that appellant filed six refund claims before the Adjudicating Authority and all the six refund claims were rejected by the Adjudicating Authority. Against which, for the refunds pertaining to June 2008 to September 2008, appellant filed appeal before Commissioner (Appeals) which came to be allowed and the appellant received refund. However, refund claims for the period October 2008 and November 2008, though the same were also rejected by the Adjudicating Authority, the appellant did not file any appeal. Against rejection of refund in respect of these two refunds, the appellant approached the Adjudicating Authority for sanction of the refunds on the ground that Commissioner (Appeals), in respect of four refund claims has sanctioned and allowed the refund. The Adjudicating Authority rejected the request of the appellant on the ground that against the order-in-original rejecting the refunds, the appellant had not filed appeal before the Commissioner (Appeals). Against such rejection of request of the appellant, the appellant filed appeal before the Learned Commissioner (Appeals), who also concurring with the stand of the Adjudicating Authority, dismissed the appeal, therefore, the present appeal.

2. Shri Dhaval Shah, Learned Counsel appearing on behalf of the appellant submits that since the admissibility of refund has already been decided in respect of four refund claims, therefore, for other two refund claims the appellant is entitled for refund.

3. Shri S.N. Gohil, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He relied on the Hon'ble Supreme Court decision in the case of *Collector of Central Excise, Kanpur vs. Flock (India) Pvt. Limited – 2000 (120) ELT 285 (SC*).

4. We have heard both the sides and perused the record. We find that there is no dispute for the fact that, in respect of original rejection of refund claims, the appellant did not challenge the adjudication order before the Commissioner (Appeals). Therefore, the first adjudication attained finality by not challenging the same. The appellant, on the basis of order of the Commissioner (Appeals), which was in favour of the appellant cannot challenge before whom the matter of other claim relief in other case, where the rejection of refund order was not challenged. In the case of *Flock (India) Pvt. Limited (Supra)* the Hon'ble Supreme Court clearly held that

without challenging the order, refund cannot be claimed. Therefore, agreeing with the view taken by both the lower authorities, we are also of the view that since the appellant have not challenged the rejection order passed by the Adjudicating Authority, the said order attained finality according to which the refund stand rejected and the same cannot be given to the appellant. Accordingly, the impugned order is upheld and the appeal is dismissed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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