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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10195 of 2013- DB

(Arising out of OIA-SRP/134/DMN/2012-13 dated 25/10/2012 passed by Commissioner of Central Excise-DAMAN)

Bilag Industries P Ltd **........Appellant**
Plot No. 306/3, 2nd Phase, Gidc, Vapi, Gujarat

VERSUS

C.C.E. & S.T.-Daman **......Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station, Vapi, Gujarat- 396191

APPEARANCE:
Shri Ishan Bhatt, Advocate for the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR

Final Order No. A/ 11213 /2023

DATE OF HEARING: 17.02.2023
DATE OF DECISION: 07.06.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for the refund of an amount paid during the pendency of appeal on their own when such amount was covered under extended period of demand which was set aside by the Tribunal.

2. Shri Ishan Bhatt, Learned Counsel appearing on behalf of the appellant submits that in the Show cause notice demand was raised for extended period under section 11 A. He submits that even for issuance of show cause notice demand for extended period cannot be proposed when the same is beyond normal period and there is no suppression of fact , misdeclaration, collusion , fraud etc with intent to evade duty. Therefore, the demand for extended period even though set aside on time bar, the same is not recoverable invoking Section 11 A. Therefore, the same is refundable to the

appellant. He also clarified that though the Tribunal has confirmed the demand for the normal period on merit but against the Tribunal order, the appellant have filed appeal before Hon'ble Supreme Court which is pending. He also submits that the Tribunal order to the extent it dropped the demand on time bar the revenue appeal is pending before the Hon'ble Gujarat High Court.

3. Shri Tara Prakash, Learned Deputy Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that against the Tribunal order whereby the present refund arose is under challenge both by Revenue before the Hon'ble High Court and for merit the appellant's appeal before the Hon'ble Supreme Court. In this position, we are of the view that since the Tribunal's order dated 23.04.2010 has been appealed against both by revenue as well as by the appellant before the Hon'ble High court and Supreme Court respectively, the present refund matter must be decided only after the outcome of the matters pending before the High Court and Supreme court.

4.1 Accordingly, we set aside impugned order and remand the matter to the Adjudicating authority for keeping it in abeyance till the judgments of Hon'ble High Court and Hon'ble Supreme Court as the case may be.

5. Appeal is allowed by way of remand to the Adjudicating Authority.

(pronounced in the open court on 07.06.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)

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