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

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 12326 of 2018

(Arising out of OIA-AHD-CUSTM-000-APP-039-18-19 Dated- 24/05/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Gail (india) Ltd **........Appellant**
16,bhikaji, Cama Place, R.k. Puram,
NEW DELHI,

VERSUS

C.C.-Ahmedabad **........Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad,, Gujarat

APPEARANCE:
Shri. Manish Jain, Advocate for the Appellant
Shri. Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA MEMBER (JUDICIAL)

FINAL Order No. A/ 11824 /2023

DATE OF HEARING:25.08.2023
DATE OF DECISION:25.08.2023

RAJU

This appeal has been filed by Gail (India)Ltd against rejection of the refund claim filed by them.

2. Learned Counsel pointed out that the provisional assessment was finalized by revenue, however, the fact of finalization of provisional assessment was communicated to them on much letter date. The appellant filed a refund claim within the time period prescribed under Section 27 of the Customs Act, 1962 counting from the date of service of order of final assessment. However, revenue has taken the date of finalization in the internal system as the date of finalization of provisional assessment. Learned Counsel has relied on the decision of Tribunal in the case of HINDUSTAN

TIMES LTD.-1991 (56) ELT 856 (Tribunal). The said decision holds that the limitation in case of the refund has to be calculated from the date of service of order. Similar view has been held in case of HIND OFFSHORE PVT.LTD-2022 (6) TMI 1090-CESTAT-Mumbai and also in the case of INDIAN OIL CORPORATION LTD. -2014 (308) ELT 169.

3. Learned AR relies on the impugned order. He argued that the fact that assessment was finalized could have been known to the appellant on account of their access to ICEGATE system. He argued that the appellants have access to the ICEGATE and earlier, they have been accessing the data through ICEGATE.

4. Learned Counsel and rejoinder pointed out that in the part every time revenue has communicated the order of finalization assessment in writing. In support of the claim reproduced such communications issued vide letters dated 02.03.20218, 07.04.2018, 07.06.2018, 04.04.2018, 10.03.2017, 10.03.2017, 23.03.2017, 26.04.2017, 15.11.2017, 21.11.2017 and 21.11.2017.

5. We have considered the rival submission. we find that the Tribunal as has held that the order of finalization of the provisional assessment is the relevant date for the purpose of claiming refund. In the case of Indian Oil Corporation (supra) following has been observed._

> ***"2.****The second issue is whether the refund arising out of completion of provisional assessment shall undergo the process of Section 27 when the refunds related to the period prior to 13-7-2006.*
>
> ***3.****To answer both the issues, facts are not in dispute exhibiting that the provisional assessments in the case of the appellant were completed prior to the communication of the final assessment order. The date on which a public order is served on the person to whom that is meant, such date of service is counted for remedial measure if the person on whom the order served is aggrieved. The date of communication is deceive for different purposes of law in respect of the person to whom the order is meant and on whom that is served.*
>
> ***4.****Secondly when refund arises upon completion of provisional assessments, that flows suo motu under law prior to 13-7-2006 to the assessee without an application being made. The refund so arsing does not under go the process of Section 27 of the Customs Act, 1962*

> *but is covered by the Section 18 of the said Act. However Section 18 has undergone amendment with effect from 13-7-2006 with necessary implication that even refund arising on completion of provisional assessment shall be governed by Section 27 of the said Act. By that amendment, bar of limitation as well as unjust enrichment are enacted to the law. Therefore before 31-7-2006, the refund arising upon completion of the provisional assessments is not intended by law to undergo the test of limitation as well as unjust enrichment in terms of law laid down by the Hon'ble High Court of Delhi in the case of the present appellant reported in 2012 (282) E.L.T. 368 (Del.). Following the ratio laid down therein, appeal of the appellant is allowed and the refund is payable to the appellant".*

In view the above, we find that the case of the appellant is covered by the aforesaid decisions an date of service of finalization of provisional assessment is the relevant date for this purpose.

6. Learned AR has argued that the information regarding finalization was known to the appellant and they could have accessed the dome through the ICEGATE, however, it is also notice that revenue has been regularly serving the order of finalization of provisional assessment as can be seen from the letters dated 02.03.20218, 07.04.2018, 07.06.2018, 04.04.2018, 10.03.2017, 10.03.2017, 23.03.2017, 26.04.2017, 15.11.2017, 21.11.2017 and 21.11.2017 produced by the appellant.

7. In view of the above, we find merit in the argument of the appellants, the appeal is allowed.

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI