CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO. 3

EXCISE Appeal No. 10314 of 2019-SM

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEAL-PS-613-2018-19 dated 29.11.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I(Appeal)]

Plastomake ...Appellant

Plot No 30 Golden Industrial Estate Somnath Road
Dabhel
DAMAN, 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:

Present For the Appellant : Shri Uday B. Kadu, Advocate

Present For the Respondent : Shri R.P. Parekh, Superintendent(AR)

CORAM: HON'BLE MEMBER (TECHNICAL), RACHNA GUPTA

FINAL ORDER NO. A/12505 / 2021

DATE OF HEARING/DECISION : 21/10/2021

RACHNA GUPTA

The present appeal has been filed to assail the Order in Appeal number CCESA-SRT(Appeal)/PS-613/2018-19 of 29/11/2018. The facts, in brief culminating the appeal are as follows:

The appellants are engaged in manufacture of plastic bottles and feeding nipples. During the course of audit of appellant's account, the department observed that their final product have been cleared at 2% rate of duty which was not paid from their PLA. The appellant had duly complied with the said observation and made the payment in cash on 05th February, 2018. However, since the said amount of duty was already paid by the appellant through their Cenvat credit account in 2015 itself, the appellant filed the refund of the duty paid on 03rd April, 2018. The same was proposed to be rejected by Show cause notice no. 383 dated 07th June, 2018 along with demand of interest and proposal for imposition of penalties. The said proposal was confirmed initially vide Order in Original dated 09th July, 2018. The appeal thereof has been rejected vide order under challenge.

2. I have heard Shri Uday B Kadu, Advocate of the appellant firm and Shri R.P. Parekh, learned Superintendent (Authorized Representative).

3. Learned Counsel for the appellant has submitted that in terms of notification of 01/2011-CE dated 01 March, 2011, the duty was paid at the rate of 2%, though not in cash but by their Cenvat Credit account. An objection was raised by the audit officer requiring the said duty to be paid in cash from PLA. The appellant duly complied with the said observations of the audit team and deposited an amount of Rs.2,11,642/- in cash on 05 February, 2018. Due to the said payment the duty for the impugned clearance, got paid twice that the subsequent payment in cash gave cause of action to appellant to claim the refund of duty which was paid from its CENVAT Credit account. It is submitted that in the given circumstances plea of limitation as has been raised by Learned Commissioner (Appeals) is not justified. Learned Counsel has laid emphasis upon the decision of Hon'ble Apex Court in the case of **Union of India vs. ITC Ltd. 1993(67) ELT 3 (SC)**, also on the decision of this Tribunal Bench in the case of **Total Environment Ltd. vs. CCE, Bangalore re 2017(357) ELT 1215**. With these, learned counsel has prayed to set aside the order under challenge and this appeal be allowed.

4. For rebutting these submissions, learned Department Representative has impressed upon that refund has been filed under section 11B which prescribes a period of limitation of one year from the date of payment of duty for seeking refund thereof. Since the refund of duty has been claimed for the payment which was made in the year 2015, the claim is apparently barred by time. There is no infirmity in the order under challenge.

4.1 With respect to the plea of unjust enrichment as impressed upon by learned counsel, it is submitted that the said ground has already been held irrelevant for the impugned refund by the Original Adjudicating Authority.

Para 16.2 of the OIO has been impressed upon justifying the impugned order, learned DR has prayed for the dismissal of appeal after hearing the relevant rival contentions and perusing the records.

5. After hearing the rival contentions and perusing the records, I observe and hold as follows:

That there is no dispute to the fact that the amount of duty as was supposed to be paid by the appellant at the time of clearance of his final product has been paid by the appellant twice, initially in May 2015 through their Cenvat Credit Account and, subsequently on 07.06.2018 after the audit team objected the payment of duty from Cenvat Credit account on the ground that the amount of duty was required to be paid in cash through PLA. The duty was accordingly again paid on 05 February, 2018 but now in cash. Thus, there is absolutely no denial that amount of Rs. 2,11,642/- as duty on clearance of appellants final product stands paid twice by the appellant. It is because of the said reason that the impugned refund was filed by the appellant. Since the benefit of exemption notification has been upheld and apparently the duty under the said notification (notification no. 01/2011) is to be paid in cash that the duty got again deposited in cash on 05.02.2018. It is thereafter that the appellant filed the impugned refund.

6. The learned Commissioner (Appeal) has upheld the findings of the original Adjudicating Authority where the claim has been rejected on the ground of being filed after much delay from the date of payment of duty by the Cenvat Credit account. As per Notification dated 01.03.2011 duty, in the given circumstances was to be paid 100% in cash. The said duty was paid on 07.06.2018. Hence the limitation in Section 11B of Central Excise Act, 1944 shall reckon from 07.06.2018. To my opinion, the above admitted and apparent facts are sufficient to hold that the cause of action to claim the refund arose only on 05 February, 2018. There is nothing on record to suggest that payment of duty made on May 2015 through CENVAT Credit account was with intent to evade duty. Since duty was paid by the appellant, no question of evasion arises. Hence, it will not be appropriate to hold that the payment in May 2015 was made to evade. However, was made through

Cenvat account instead of being made in cash. The moment said mistake has been made good in February 2018 by depositing the same amount again but in cash, the amount deposited in 2015 becomes liable to be refunded to the appellant. Otherwise also, department cannot withheld the money which does not belong to the department as the same shall amount to unjust enrichment to the department. In view of these observations, I am of the opinion that plea of limitation has wrongly been invoked by the Adjudicating Authority. In the given circumstance, the date of payment in terms of section 11 B shall be the date of cash payment of duty. I draw my support from the decision of this Tribunal from **Civil Appeal no. 431 of 2011 reported as 2014 (301) ELT 247** which has duly been relied upon in the decision of Total Environment Ltd.(supra) wherein it has been clearly held that re-credit of duty paid through CENVAT credit is permissible and the refund cannot be denied on the ground of time bar invoking the provisions of section 11B of Central Excise Act. In view of above discussion I hereby set aside the order under challenge. Resultantly, the appeal stands allowed.

(Dictated and pronounced in the open court)

(RACHNA GUPTA)
MEMBER (JUDIICIAL)

Diksha