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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10342 of 2021

(Arising out of OIA-JMN-CUSTM-000-APP-068-20-21 dated 10/03/2021 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV))

NAYARA ENERGY LTD ……**Appellant**

Formerly Known As Essar Oil Ltd Pb No 24 Head Post Office Khambhalia
Devbhumi Dwarka, Devbhumi Dwarka, Gujarat

VERSUS

C.C.-JAMNAGAR(PREV) ………**Respondent**

Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

APPEARANCE:

Shri. Vishal Agrawal, Ms. Dimple Gohil and Shri Abhishek Deodhar, Advocates for the Appellant
Shri. T.G. Rathod, Additional Commissioner (AR)for the Respondent

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

Final Order No. A/ 12562 /2021

DATE OF HEARING: 06.08.2021
DATE OF DECISION: 02.12.2021

RAMESH NAIR

The issue involved in the present case is that whether the appellant's refund claim is hit by limitation and whether in absence of any specific letter for payment of duty under protest, the payment of duty for which refund sought for can be treated under protest.

2. Shri. Vishal Agrawal, Learned Counsel along with Shri. Abhishek Deodhar and Ms. Dimple Gohil, Advocates appearing on behalf of the appellant made a detail submission. He submits that even though specific letter for payment of duty under protest was not filed but the same should be treated under protest particularly when no show cause notice was issued to appropriate amount to duty paid as deemed under protest. He submits that the words "under protest" need not be specifically mentioned on the payment documents. He submits that the payment was made during investigation, therefore, the said payment is deemed to be under protest. He further submits that during investigation DRI was not entitled to collect any amount therefore, the amount of duty paid on the behest of DRI should be treated under protest. He further submits that the amount paid is a deposit and not duty.

3. On the other hand, Shri. T.G. Rathod, Learned Additional Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have heard both the sides and perused the records. We find that the refund was rejected being time barred as the same was filed after one year from the date of payment of duty. Both the lower authorities have held the refund as time bar on the ground that the appellant have not paid the duty "under protest" by submitting a letter of protest. It is the submission of the appellant that even though the letter of protest was not given but since the duty was paid during investigation and no show cause notice was issued in respect of such duty payment, the duty so paid should be deemed to be under protest. They have relied upon the various following judgments in support of their arguments.

- Sun Pharmaceutical Industries Ltd. (TS-232-CESTAT-2021 (DEL)]
- India Cements [1989 (41) ELT 358 (SC)]
- Shree Shyam Filaments (2014 (303) ELT 195 (Raj.)]
- Pricol [2015 (320) ELT 703 (Mad)]
- Gee Kay International (2008 (230) ELT 590 (P&H)]
- Vodafone Essar South Ltd. [2009 (237) ELT 35]
- Abhishek Fashions [2006 (202) ELT 762 (Guj)] S
- Sanmar Foundries [2015 (325) ELT 854 (Mad)]
- Century Metal Recycling [2009 (234) ELT 234 (P&H)]
- Jayant Glass [2003 (155) ELT 188 (Tri-Delhi)]

3.1 We find that even if letter of protest is not filed if otherwise, the appellant is protesting the demand the same should be treated under protest. Since, the main reason for holding the refund as time bar is the appellant has not filed a specific letter of protest for payment of duty. In our view, the expression of protest itself is payment under protest. However, in the facts of the case on the basis of correspondence made between the appellant and department, it is to be ascertained that the appellant have protested the payment of duty on demand of duty by the department at any point of time and on that basis the issue to be decided a fresh. The appellant have relied upon the various judgements which also need to be considered while deciding that whether the duty payment by the appellant is under protest or otherwise without going into fact that the appellant have not filed a specific letter of protest.

4. Accordingly, we set aside the impugned order and allow the appeal by way of remand to the adjudicating authority for passing a fresh de novo order, considering our above observation. Since the matter is of October, 2013 the adjudicating authority should pass the de novo order within a period of three months from the date of this order.

(Pronounced in the open court on 02.12.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi