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

REGIONAL BENCH- COURT NO.3
**Excise Appeal No.10002 of 2019**
(Arising out of OIA-CCESA-SRT-APPEAL-PS-371-2017-18 dated 04/09/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

**Galaxy Transmission Pvt Ltd** ......**Appellant**
Madhuban Inustrial Estate, S.No. 99/2, Plot No. 11,
Madhuban Dam Road, Rakholi,
Silvassa, Dadra & Nagar Haveli

*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:**
None appeared for the Appellant
Shri. R.P. Parekh, Superintendent (Authorized Representative) for the Respondent

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

**Final Order No. A/ 12579 /2021**

DATE OF HEARING: 02.12.2021
DATE OF DECISION:02.12.2021

**RAMESH NAIR**

The issue involved is that whether the appellant's refund claim of excise duty paid on goods which were eligible for exemption Notification No. 108/95-CE dated 28.08.1995 is time barred or otherwise. As per the facts of the case, the appellants have paid the duty under the cover of invoice dated 30.06.2016. Subsequently, they realised that the goods supplied is eligible for exemption under Notification No. 108/95-CE dated 28.08.1995, and accordingly, they filed the refund claim on 18.09.2017. The case of the department is that the refund claim is time bar in terms of Section 11B as the same was filed after stipulated time period of one year from the relevant date.

2. None appeared on behalf of the appellant despite several opportunities given for hearing, therefore, the appeal is taken up for disposal.

3. Shri Rajesh Parekh, Learned Superintendent (Authorized Representative) appearing for the Revenue reiterates the findings of the

impugned order. He also filed a compilation of notification and case law vide letter dated 24.11.2021 which is taken on record and considered.

4. After careful consideration of submission made by Learned AR and perusal the records, I find that the stand of the appellant is that the duty which was paid not actually payable in terms of Notification 108/95-CE therefore, the amount paid is not duty but deposit accordingly, the time limit as provided under Section 11B would not apply. The appellant have relied upon various judgements of Hon'ble High Courts.

5. I find that there is no dispute that at the time of clearance of the goods, the appellant have paid the excise duty subsequently, they realize that duty was not payable in terms of Notification No. 108/05-CE however, the nature of duty so paid would not change and as per my view it is the duty only which was paid by the appellant and when it is so then the limitation provided under Section 11B would clearly apply. As the fact reveals that the refund claim was filed beyond one year from the relevant date, the same is time bar.

6. As regard the various High Court judgments cited by the appellant, I find that this Tribunal being creature under the statute is governed by the same statute wherein statutory time limit has been provided under Section 11(B), therefore, the statutory time limit provided by the act cannot be ignored. Their Lordships in the various High Courts have inherent power to relax the time limit but this Tribunal has no power to do the same. Therefore, the refund being clearly time bar, was rightly rejected by the lower authorities. Accordingly, the impugned order is upheld. Appeal is dismissed.

(Dictated and Pronounced in the open court)

**(RAMESH NAIR)**
**MEMBER (JUDICIAL)**

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