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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 11230 of 2019

(Arising out of OIA-VAD-EXCUS-002-APP-600-2018-19 dated 22/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Hindalco Industries Limited ……**Appellant**

Unit Birla Copper
Dahej, Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii ………**Respondent**

1st Floor... Room No.101,
New Central Excise Building,
Vadodara,Gujarat -390023

APPEARANCE:

Shri. Vinay Kansara, Advocate for the Appellant
Shri R.P Parekh, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10008 /2022

DATE OF HEARING: 05.01.2022
DATE OF DECISION: 05.01.2022

RAMESH NAIR

In the present case the refund claim of the pre-deposit made as per direction of the Commissioner (Appeals) in the appeal pending before him was rejected by the department on the ground of time bar in as much as the appellant has filed the refund claim on 25.05.2018 after the final order was passed by the Commissioner (Appeals) on 24.04.2009, accordingly, the departments condition is that the refund claim was filed after one year from the date of the Commissioner (Appeals), hence, the same is time bar.

2. Shri. Vinay Kansara, Learned Counsel appearing on behalf of the appellant submits that the amount paid by the appellant is clearly a pre-deposit, as per the stay order passed by the Commissioner (Appeals). Therefore, the same is not duty but it is pre-deposit, accordingly, the time limit prescribed under section 11B of Central Excise Act, 1944 is not applicable in the present case. He further submits that after passing an order by the Commissioner (Appeals) in favour of the appellant the department

challenged the order said before CESTAT and the CESTAT has passed the order on 26.04.2018 rejecting the refund appeal. It is for that reason the appellant filed the refund claim on 25.05.2018, therefore, there is a delay in filing the refund claim. He placed reliance on the Board Circular No. 275/37/2K-CX.8A dated 02.01.2002 and also the Circular No.984/08/2014-CX dated 16.09.2014. He also placed reliance on the following judgments:-

- Kunj Behari Dye Chem Pvt. Ltd. -2009 (241) E.L.T. 84 (Tri. - Bang,)
- Nelco Limited - 2002 (144) E.L.T. 56 (Bom.)
- Union of India v. Nelco Limited - 2002 (144) E.L.T. A104 (S.C)
- Konark Cylinders- 2002 (144) E.L.T. 454 (Tri. - Kolkata)
- Consul Consolidated P. Ltd.- 2002 (141) E.L.T. 792 (Tri.- Chennai)
- Suvidhe Ltd. 1996 (82) E.L.T. 177 (Bom.)
- Sandvik Asia Ltd. - 2017 (52) S.T.R. 112 (Bom.)
- Estee Auto Pressings (P) Ltd. - 2017 (346) E.L.T. 72 (Mad.)
- Pepsi Foods Ltd. - 2000 (118) E.L.T. 536 (Tribunal)
- Gujarat State Fertilizers & Chem. Ltd.- 1999 (105) E.L.T. 52 (Tribunal)
- Enzo Chem Laboratories P. Ltd. - 1996 (83) E.L.T. 434(Tribunal)
- Vijendra Trading Co. - 1994 (74) E.L.T. 338 (Tribunal)
- Mgm Metallisers Ltd. - 2013 (295) E.L.T. 451 (Tri. - Ahmd.)

3. Shri. R. P. Parekh, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He further submits that the appellant was supposed to file refund claim within one year from the date of the Commissioner (Appeals) order whereby the refund has arisen ,therefore, filing of refund claim after one year is time bar in terms of Section 11B.

4. I have carefully considered the submission made by both the sides and perused the records. I find that the amount paid by the appellant is clearly a pre-deposit, as per the stay order passed by the Commissioner (Appeals) dated 20.06.2008. In case of refund of pre-deposit the board in the Circular dated 02.01.2002 has clarified as under:-

> *'refund applications under Section 11B(1) of the Central Excise Act, 1944 or under Section 27(1) of the Customs Act, 1962 need not be insisted upon. A simple letter from the person who has made such deposit, requesting the return of the amount, along with an attested Xerox copy of the order-in appeal or CEGAT order consequent to which the deposit made becomes returnable and an attested Xerox copy of the Challan in Form TR6 evidencing the payment of the amount of such deposit, addressed to the concerned Assistant/Deputy Commissioner of Central Excise or Customs, as the case may be, will suffice for the purpose'.*

It was further reiterated by the board in Circular dated 16.09.2014 as under:-

> *"Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962'. It has also been further clarified in the Circular of 2014 at para 7 that "A simple letter from the person who has made such deposit, requesting for return of the said amount, along with a self-attested Xerox copy of the order-in-appeal or the CESTAT order consequent to which the deposit becomes returnable and attested Xerox copy of the document evidencing payment of such deposit, addressed to Jurisdictional Assistant/Deputy Commissioner of Central Excise and Service Tax or the Assistant/Deputy Commissioner of Customs, as the case may be, would suffice for refund of the amount deposited along with interest at the rate specified".*

4.1 From the above Board Circulars which are binding on the departmental Officer, the time limit of one year prescribed under Section 11B particularly in respect of pre-deposit which is by an order of the appellate forum, shall not apply. Moreover there is a reason for filing appeal on 25.05.2018 by the appellant that the departments appeal before the CESTAT was pending and appellant had filed the refund claim immediately after the Tribunal's order dismissing the departments appeal on 26.04.2018 for this reason also the refund cannot be rejected on time bar.

5. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
(MEMBER JUDICIAL)

Prachi