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

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 12285 of 2019

[Arising out of OIA-CCESA-SRT-APPEAL-PS-188-2019-20 dated 28/06/2019 passedby Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Pramukh Poly Products .....**Appellant**
Survey No. 166-P, Kannadi Fatia,
Behind National Flask Compound, Naroli
Silvassa, Dadra And 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:
Shri Uday B. Kadu, Advocate for the Appellant
Shri Ghanshyam Soni, Joint Commissioner (AR) for the Respondent

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

FINAL ORDER NO.A / 10399 /2022

DATE OF HEARING: 26.04.2022
DATE OF DECISION: 26.04.2022

RAMESH NAIR

The brief facts of the case are that the appellant have made an advance deposit in PLA on 04.07.2017 for payment of duty for period of June 2017. Since after debiting the duty of June 2017, some amount was left in PLA balance as unspent amount. Since from 01.07.2017 GST became applicable, the appellant could not use the PLA balance and they filed a refund claim on 03.12.2018. The refund claim was rejected by the Original Authority on the ground of time bar as the same was not filed within 1 year from the date of payment i.e. 04.07.2017. The appellant being aggrieved by the order in Original filed appeal before the Commissioner (Appeals) who concurring with the Original Authority rejected the appeal. Therefore, the present appeal filed by the appellant.

2. Shri Uday B. Kadu, Learned Counsel appearing on behalf of the appellant submits that the refund which was filed by the appellant is in respect of unspent amount lying in PLA which is not a duty but the amount belongs to the appellant only in the form of credit balance in PLA. Therefore, the Section 11B which involved the limitation has no application in case of refund of PLA balance. He placed reliance on the following judgments:-

- 2005 (190) ELT 106 (Tri.- Kolkata)- Jay Shree Tea & Industries Ltd. Vs. Commissioner of C.CE., Kolkata
- 2007 (210) ELT 417 (Tri.- Mumbai)- Navdeep Packaging Industries Vs. Commr. Of C. EX., Ahmedabad-II
- 2009 (248) ELT 566 (Tri.-Ahmd.)- Welspun India Ltd. Vs. Commissioner of Central Excise, Rajkot
- 2018 (364) ELT 1039 (Tri.- Mumbai)- Josts Engineering Co. Ltd.Vs. Commisr. Of Central Excise, Belapur

3. Shri Ghanshyam Soni, Learned Joint Commissioner (Authorized Representative) appearing on behalf of the revenue reiterates the findings of the impugned order. He submits that Learned Commissioner (Appeals) has relied upon the judgment of this Tribunal in the case of Valson Polyester Ltd. Vs. Commissioner of Central Excise Daman 2011 (274) ELT 444 (Tri.- Ahmd) wherein the refund of balance lying in the PLA has been rejected on the ground of time bar. Therefore, he support the order of the Commissioner (Appeals).

4. I have carefully considered the submissions made by both the sides and perused the records. As per the fact there is no dispute that amount for which the appellant has sought for the refund is unspent balance in the PLA. This amount is out of the amount deposited as advance against the payment of duty in their PLA. The said amount is not a duty. The duty is payable only on the clearance of the Goods. Once any clearance is made and any amount on duty of such clearance is debited from the advance credit balance in PLA

only that amount will be treated as duty. The amount lying balance in PLA in any case cannot take a colour of excise duty. Therefore, for refund of any unspent PLA balance Section 11B is not applicable for the simple reason that the Section 11b provides refund in respect of duty. The issue has been considered time and again in the cases relied upon by the Learned Counsel. As regard the judgment in Valson Polyester Ltd. which was heavily relied upon the Learned AR and the same was considered by the Learned Commissioner (Appeals), I find that the identical issue has been considered by the Division Bench. In the case of Valson Polyester Ltd. (Supra), the same was not taken note of by the Single Member Bench in Valson Polyester Ltd. Therefore, the Valson Polyester Ltd. case cannot be held as good law. Hence, the same is distinguish. As per my above discussion and findings and the cases cited by the Learned Counsel, I am of the clear view that time limitation is not applicable in case of refund of unspent amount of PLA.

4. Accordingly, the appellant is entitled for the refund. Hence, the impugned order is set aside and appeal is allowed.

(Dictated & Pronounced in the open Court)

RAMESH NAIR
MEMBER (JUDICIAL)

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