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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 12767 of 2018 – DB

(Arising out of OIA-CCESA-SRT-APPEALS-PS-354-2018-19 dated 31/08/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Polycab Wires Pvt Ltd ....**Appellant**
Plot No. 74/8-11, 38/1-6, 41/4-9, 42/1-2, 43/1-3, 44/1-3, 45/1-2,
Daman Industrial Estate, Village-kadaiya,
Daman, Daman(UT)

VERSUS

Commissioner of C.E. & S.T.-Daman ......**Respondent**
3rd Floor...Adarsh Dham Building,
Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat- 396191

With

Excise Appeal No. 10041 of 2019 – DB

(Arising out of OIA-CCESA-SRT-APPEALS-PS-353-2018-19 dated 31/08/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Polycab Wires Pvt Ltd ....**Appellant**
Plot No. 74/8-11, 38/1-6, 41/4-9, 42/1-2, 43/1-3, 44/1-3, 45/1-2,
Daman Industrial Estate, Village-kadaiya,
Daman, Daman(UT)

VERSUS

Commissioner of 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 Jigar Shah & Shri Amber Kumrawat, Advocate for the Appellant
Shri Rajesh R Kurup, Superintendent (AR) for the Respondent

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

Final Order No. 12500-12501/2024

DATE OF HEARING: 16.10.2024
DATE OF DECISION: 24.10.2024

RAMESH NAIR

The issues involved in the present case are that:-

1) Whether the appellant is entitled for the refund in respect of the duty paid by their Daman unit (appellant) which is liability of their Halol unit. And as per the direction the revenue, the dues of Halol unit was also paid. This mistake has occurred due to error of ERP system which is meant for all the group units.

2) Whether for the purpose of computation of time period of one year provided under Section 11B for refund of duty should be computed as on date of first time of filing of refund or on the date of second time filing of refund after return of the refund by the department.

2. Shri Jigar Shah Learned Counsel with Shri Amber Kumrawat learned Advocate appearing on behalf of the appellant at the outset submits that as regard the admissibility of the refund there cannot be any dispute that the appellant have paid the duties which is liability of the Halol Unit and in case of Halol unit also the duty was subsequently paid. Therefore, the duty paid by the appellant unit is legally refundable. Hence, on this count the refund is admissible.

2.1. He also submits that the appellant have filed the refund claim within one year form the relevant date, in terms of Section 11B of Central Excise Act, 1944. Subsequently, department has returned the refund claim, so even though the date of filing of refund second time is after one year from the relevant date but the date of first filing of refund should be taken as date of filing from the relevant date. Accordingly, the appellant's refund claim is not time bar. This issue has come up in various judgments before this Tribunal. He placed reliance on the following judgments:-

- Nokia India Sales Pvt. Ltd Vs CC 2019 (368) ELT 975 (Tri.-Ahmd.)
- CCE Vs Bhandiguri Tea Estate 2001 (134) ELT 116 (Tri.-Kolkata)
- Devang Paper Mills Pvt. Ltd Vs Union of India 2016 (41) STR 418 (Guj.)
- Auro Pumps Pvt. Ltd Vs Union of India 2017 (353) ELT 7 (Guj.)

He submits that in view of the above judgments, it is settled that the date of first time filing of refund should be within one year from the relevant date which is not in dispute in the present case. Hence, the refund is not time barred.

3. Shri Rajesh R Kurup, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned orders. He also placed reliance on the following judgments:-

- Cummins Technologies I P Ltd Vs. Union of India-2023 (386) ELT 494 (Bom)
- MRF Ltd Vs. CCE, Chennai-2002 (149) ELT 801 (Tri-Chennai)
- E V Mathai & Co CCE, Cochin -2006 (3) STR 116 (Tri-Bang)
- Lorenzo Bestonso Vs. CC, JNCH - 2017 (347) ELT 104 (Tri-Mum)
- Ahmedabad-I Vs. Medico Labs-2004 (173) ELT 117 (Guj) - CCE,
- CST Vs. Associated Hotels Ltd-2015 (37) STR 723 (Guj)

4. We have carefully considered the submission made by both the sides and perused the record. We find that as regard the admissibility of the refund there is no dispute that the duty liability of halol unit was paid by the appellant's Daman unit due to error in the ERP system. Therefore, the duty paid in access by the appellant unit is clearly refundable to them in principle. somewhat identical issue has been considered by the Hon'ble Gujarat High Court in the case of Auro Pumps Private Ltd (supra) wherein Hon'ble Court after considering the identical facts passed the following order:-

> ***"10.*** *We are of the considered view that when authorities' stand became very clear from the communication at page 102 and reply that there exists no demand of duty or any sum payable from the petitioners so far as assessee code No. 001 is concerned and when the authority has also knowledge that there was a mistaken payment made under challan, which contained incorrect code i.e. Code No. 001, though it belonged to present assessee, who also has Code No. 002 also and who unequivocally intended to make payment demand, which was payable to him and which was paid, though mistakenly under wrong code i.e. Code No. 001, could not have been subjected to technical defect on the part of authority, so as to saddle with liability and the judgments of this Court in case of Devang Paper Mills Pvt. Ltd. (supra) cited at bar would help the case of the petitioners, as the observations made in said decisions do squarely cover the current situation.*
>
> ***11.*** *In that view of the matter, without making much reflection upon the findings of the authority, we are of the view that this is a case of issuing appropriate mandamus for calling upon the authorities to treat the payment*

of Rs. 5,10,573/- against Code No. 002 from the date on which, it was paid resulting into exempting the petitioners from any coercive liability of so called non-payment against Code No. 002. All the communications and order, which are impugned in the petition are hereby quashed and set aside. The petition, thus, is allowed. Rule is made absolute to aforesaid extent. No order as to costs."

4.1 The Hon'ble Gujarat High Court dealing the case of Devang Paper Mills Pvt. Ltd (Supra) on the identical issue passed the following order: -

"The petitioner has prayed for setting aside the communication dated 5-5-2015 as at Annexure-A to the petitioner as well as notice dated 21-7-2015 as at Annexure-M to the petition.

2. *Brief facts are as under : -*

2.1 *The petitioner is a private limited company and is engaged in the manufacture of excisable goods for which the petitioner enjoys central excise registration. Petitioner has been allotted Code No. AADCD7232REM002. It is under this code that the petitioner regularly files its returns. In the month of August, 2014, the petitioner has incurred duty liability of Rs. 22,15,000/-, which liability the petitioner discharged in cash through personal ledger account. While paying such duty, the 'challan' under which the amount is deposited in the bank, the petitioner, due to oversight, mentioned the assessee Code No. AADCD7232REM001 instead of Code No. AADCD7232REM002. The petitioner immediately thereupon pointed out this issue to the Audit Officer under letter dated 19-3-2015 in detail explaining the background leading to such mistake. On 5-5-2015, the Department wrote to the petitioner that the assessee code now cannot be changed and only remedy available to the petitioner would be to seek refund. It was conveyed to the petitioner that the duty paid in the wrong assessee code cannot be treated as payment of excise duty for the month of July, 2014 and the assessee should therefore make payment of the said amount again. Any delay would invite interest and penalty.*

2.2 *It is this letter dated 5-5-2015 the petitioner has challenged in the present petition. Pending the petition, the petitioner also received notice dated 21-7-2015 pointing out to the petitioner that for the month of August, 2014, the petitioner had to deposit the basic duty of Rs. 20.25 lacs, which would further invite education cess, higher education cess and payer cess. The petitioner did deposit amount of Rs. 22.15 in the wrong code, which would be treated as non-payment of duty. Under the circumstances, the petitioner would invite penalty under Rule 8(3A) of the Central Excise Rules, 2002. The petitioner was thereupon called upon to show cause why action should not be taken for recovery of the unpaid duty with penalty and interest.*

3. *It is undisputed that the petitioner did deposit a sum of Rs. 22.15 lacs for the duty liability for the month of August, 2014. It is equally undisputed that the assessee code indicated by the petitioner along with the challan was wrong one. The Department does not dispute that the amount of Rs. 22.15 lacs was received by way of duty for the assessee's excise liability and the correct excise code of the assessee is AADCD7232REM002.*

4. *Counsel Shri Oza for the Department however submitted that the Accounting Division would not reverse the amount and credit into the account of the assessee. It was therefore treated as non-payment of the duty and issued notice for recovery with penalty.*

> ***5.*** *Whatever be the accounting difficulty, when undisputed fact is that the petitioner did pay a certain excise duty, merely mentioning wrong code in the process, cannot result into such harsh consequence of the entire payment not being recognized as valid, incurring further liability of repayment of the basic duty with interest and penalties. Such amount was deposited by the petitioner with the Government of India and it was duly credited in the Government account. It is not even the case of the respondents that the petitioner had any other code by the number AADCD7232REM001 and for which there was separate manufacturing activity inviting separate duty liability. Indisputably, thus, the petitioner had singular duty liability for which the actual payment was also made. Under the circumstances, the impugned communication dated 5-5-2015 and notice dated 21-7-2015 are quashed. The respondents are directed to give credit of the duty paid by the petitioner for a sum of Rs. 22.15 lacs by making necessary accounting entries on the basis that the same was paid at the relevant time. If thereafter any sum remains unpaid, it would be open for the Department to take further action in accordance with law.*
>
> ***6.*** *The petition is disposed of in the above terms."*

In view of the above judgments of the jurisdictional High Court if the duty was paid my mistake the same is refundable.

4.2 As regard the time bar issue, we find that there is no dispute that the appellant have initially filed the refund claim within one year from the relevant date, it is only after the department raised some discrepancies, the appellant have re-filled the refund second time. Therefore, in this fact the date of first time filing of the refund has to be considered as date of filing of refund application which is well within the time. Therefore, the refund is not time barred in the facts of the present case. The same issue has been considered by this Tribunal in the case of Nokia India Sales Pvt. Ltd (supra) wherein this Tribunal has passed the following order:-

> *"The brief facts of the case are that the appellant on import of mobile phones paid CVD @6%. Subsequently, in the judgment of SRF Industries Ltd. v. C.C. 2015 (318) E.L.T. 607 (S.C.) of Hon'ble Supreme Court, the exemption notification was allowed according to which CVD is payable @1%. The appellant filed refund claim for the excess paid CVD on the basis of said SRF Industries judgment. The original authority rejected the refund claim on the ground of unjust enrichment however on limitation he held that period for filing refund claim in the present case will be reckoned from one month of Hon'ble Supreme Court judgment in the case of SRF Industries. Being aggrieved by the order-in-original, appellant filed appeal on the issue of unjust enrichment. Revenue also filed appeal on the issue of time-barred. Ld. Commissioner (Appeals) allowed the appeal of Revenue and rejected the appeal of appellant, therefore, the present appeal was filed by the appellant on both the issues of unjust enrichment and time bar.*

2. *Sh. P. Paranjape, Ld. Counsel appearing on behalf of the appellant submits that though the entire refund was rejected but the part of the refund is well within one year from the date of payment which cannot be held time bar. He further submits that the appellant admittedly filed refund claim initially on 19-11-2015 and 9-10-2015 respectively related to both the appeals. The refund application was returned by the department and subsequently it was resubmitted along with Chartered Accountant Certificate. The date of initial submission of refund should be reckoned. He placed reliance on the following judgments :*

- *CCE Bolpur v. Bhandiguri Tea Estate - 2001 (134) E.L.T. 116 (Tri.-Kol.).*

- *Rubberwood India v. CC Cochin - 2006 (206) E.L.T. 536 (Tri.-Bang.).*

2.1 *As regard unjust enrichment, he submits that since the price of mobile phones at the time of payment of CVD @ 6% and subsequently remain same, therefore, there is no passing on the incidence on excess paid CVD to any person. He further submits that to this effect a Chartered Accountant Certificate was submitted which was discarded by the lower authority. He placed reliance on the following judgments :*

- *CC, New Delhi v. Organan (India) - 2008 (231) E.L.T. 201 (S.C.)*

- *Cadbury India Ltd. v. UOI - 2015 (315) E.L.T. 488 (Ker.-H.C.)*

- *ACC v. CCE, Jamshedpur - 2001 (130) E.L.T. 277 (Tri.-Kol.)*

3. *Sh. S.K. Shukla, Ld. AR appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that the appellant since not submitted any document regarding unjust enrichment which is recorded in both the orders, they have only submitted Chartered Accountant Certificate, therefore, their claim was rightly rejected being time barred and on the ground of unjust enrichment.*

4. *I have carefully considered the submission made both the sides and perused the records. I find that as regard the time bar the refund will not arise as from the date of Hon'ble Supreme Court judgment in the case of SRF Industries, the appellant was not the litigant, however the law applies to the appellant case also subject to refund is filed within one year from the relevant date. In the present case, the relevant date will be a date of payment of duty and not from the date of order of Hon'ble Supreme Court in the case of SRF Industries. However, the appellant initially filed the refund claim which was returned and then they resubmitted subsequently. In this case the initial filing of refund claim shall be considered as date of filing of refund claim and if it is within one year from the date of payment of duty then the same cannot be rejected on time bar. As regard unjust enrichment, I find that the appellant have submitted only Chartered Accountant Certificate however they have not submitted any documentary evidence in support of their claim such as the price structure of the mobile, pre and post payment of excess Customs duty they also not submitted their books of accounts in this regard, therefore, I am of the view that the matter needs to be remitted back to the adjudicating authority for passing a fresh order in view of my observation. The appellant shall submit the necessary documentary evidence to support their claim that the incidence of excess paid duty was not passed on. The impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority."*

4.3 In another judgment of the division bench of this Tribunal in the case of Bhandiguri Tea Estate, it was held as under:-

> *"Being aggrieved with the order passed by the Commissioner (Appeals) Revenue has preferred the present appeal.*
>
> ***2.*** *We have heard Shri V.K. Chaturvedi, ld. SDR. Nobody is present for the respondents.*
>
> ***3.*** *Vide the impugned order the Commissioner (Appeals) has rejected the appeal filed by the Revenue against the order of the Asstt. Commissioner vide which he has allowed an adjustment of Rs. 32,190/- excess paid by the respondents as cess on finalisation of RT-12 returns under Rule 173-I. The Revenue is aggrieved with the fact that though the original refund claim was filed by the respondents well within time, the proper refund claim in prescribed format was filed after directions from the Revenue and after a period of six months. After seeing the Asstt. Commissioner's order we fully agree with him that the first staking of refund claim which may not be in proper format has to be considered as the date for the purposes of limitation. We also find that the Asstt. Commissioner has observed that the said refund claim was made much before finalisation of assessments made under Rule 173-I. Accordingly, he has allowed the adjustment to be made. The Commissioner (Appeals) has rejected the appeal filed by the Revenue on the ground that there was no proper authorization by the Commissioner under the provision of Section 35E(2). Apart from contending in the memo of appeal that such authorization has been given on the file and directions have been given to the Asstt. Commissioner to file an appeal no authorization has been shown to us. As such in view of the foregoing we do not find any merits in the Revenue's appeal and reject the same."*

In view of the above judgments, it is settled that date of first time filing of refund shall be taken as date of filing of refund even though the refund application was returned and subsequently the same is re-filled at a later date. Accordingly, in the identical facts in the present case applying the ratio of above judgments, the refund is not time barred.

4.4 As regard the judgment cited by learned AR, on going through the same, we find that the facts and issue involved in those cases are different from that of the present case, therefore, those judgments are not applicable.

5. As regard the appeal No. E/12767/2018 the Appellant have filed the appeal against the order in appeal passed by Ld. Commissioner (Appeals) remanding the matter. The Appellants have challenged the said Order in Appeal on the grounds that the Ld. Commissioner (Appeals) has no power to remand and also on the merits of the matter. As regards the issue on Ld. Commissioner (Appeals) has power to remand the matter or not, this

Tribunal in catena of judgments considering the amendments in Central Excise Act, 1944, held that Commissioner (Appeals) has power to remand the matter. However, as regards the merits of the case in view of our above observation in another appeal of the Appellant that is mutatis mutandis applicable to this appeal as well. Therefore, on merits this appeal also deserves to be allowed on the findings given herein above.

6. In view of the above discussion and findings, the impugned orders are set aside. Appeals are allowed with consequential relief.

(Pronounced in the open court on 24.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha