

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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10757 of 2020-SM

(Arising out of OIA-CCESA-SRT-APPEAL-PS-040-2020-21 Dated- 29/07/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

SUN PHARMACEUTICAL INDUSTRIES LTD

.....Appellant

Survey No. 259/15, Village : Dadra
Dadra, 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:

None appeared for the Appellant

Shri Vijay G Iyengar, Authorised Representative for the Respondent

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

Final Order No. A/ 11351 /2022

DATE OF HEARING:03.11.2022
DATE OF DECISION:03.11.2022

RAJU

This appeal has been filed by Ms/ SUN PHARMACEUTICAL INDUSTRIES LTD against denial of refund of the PLA balance laying in their own account.

2. None appeared on behalf of the appellant. In the appeal memorandum, it has been argued that the provisions of Section 11B would not be applicable to the refund of the balance amount lying in PLA account of the appellant. They have relied on the decision of the Tribunal in their won case issued vide Order No. A/10725/2022 dated 23.06.2022. However, they requested that the matter may be decided on the basis of record.

3. Learned AR relies on the impugned order.

4. I have considered the rival submissions. I find that the issue involved is applicability of Section 11B of the Central Excise Act, 1994 for the refund of balance amount laying in the PLA account. The appellant have relied on the decision of Tribunal's own case vide Order No. A/10725/2022 dated 23.06.2022 wherein following has been observed:-

"4. I have carefully considered the submission made by both sides and perused the records. I find that the Learned Commissioner (Appeals) rejected the refund claim on the ground that the limitation under 11B is applicable according to which the claimant should have filed the refund within the one year from date of payment. I find that in case of PLA balance, it is not deposited as a duty but it is deposited as advance towards the duty. The PLA Amount takes the color of excise duty only when it is utilized for payment of duty on clearance of excisable goods. The unspent balance of PLA is only advance not duty therefore, Section 11B is not applicable. This tribunal in various decisions held as under:-

· NAVDEEP PACKAGING INDUSTRIES – 2007 (210) ELT 417 (TRI. MUMBAI)

"*Heard both sides.*

2.*The issue involved is whether the refund of unspent PLA balance is covered under Section 11B of the Central Excise Act, 1944. The Id. Commissioner (Appeals) in his order has considered the provisions of Rule 9(1A) read with Rule 173G(1A) of the Central Excise Rules, 1944 which provides for withdrawal of amount from PLA by the Commissioner and the said power of Commissioner has been delegated to Assistant/Deputy Commissioner of Central Excise. The contentions of the Id. Consultant for the appellant is that Section 11B of Central Excise Act, 1944 applies for refund of duty. This is not disputed by the Commissioner (Appeals). However, referring to clause (b) of the proviso to sub-section (2) of Section 11B, the Commissioner records that unjust enrichment shall not apply to refund of unspent PLA balance, but at the same time he also records that he does not mean that the unspent PLA balance is duty. He has recorded that the said provision has been incorporated as an abundant precaution to ensure that even by mistake, the provision of unjust enrichment is not applied for such refund. He also records that since there is a specific provision for refund of PLA balance under Rule 9(1A) and 173G(1A) of the said Rules, therefore, such refund would be squarely covered under the said Rules and not under Section 11B of the Central Excise Act, 1944. which applies only for refund of duty. He has, therefore, recorded that the provisions of Section 11BB of the Central Excise Act, 1944 granting interest for delayed refund of duty is not attracted in the present case.*

3.*After hearing, perusal of the records and relevant provisions as mentioned above, I do not find any legal infirmity in the Order passed by the Commissioner (Appeals) so far as the applicability of Rule 9(1A) and Rule 173G(1A) of the Central Excise Rules, 1944, is concerned. The appeal filed by the appellant is, therefore, dismissed."*

· JAY SHREE TEA & INDUSTRIES LTD – 2005 (190) ELT 106 (TRI.- KOLKATA)

"3.*Ld. JDR supports the impugned order. A clarification was issued by the Board regarding refund of balance in PLA Account. The matter was examined in consultation with the Ministry of Law and it was advised by the Ministry that the amount in question may therefore be refunded to the applicant. CBE & CE No. 202/24/72-CX.6, dated 6-1-1973. The PLA is deposited by the party is adjusted from time to time and as such an amount in PLA which remain unutilized belonging to the party for which the Department has no claim and the limitation has no application on such deposit. The Rule 173G (1A) deals with the procedure to be followed by the assessee for withdrawal of money from PLA is as under :-*

"Where an assessee keeping an account-current under sub-rule (1) makes an application to the [Commissioner] for withdrawing an amount from account-current, the [Commissioner] may, for reasons to be recorded in writing permit such assessee to withdraw the amount in accordance with such procedure as the [Commissioner] may specify in this behalf."

It is clear that for withdrawing an amount from such account-current only requires a permission from the Commissioner concerned. Neither the law of limitation nor the theory of unjust enrichment is applicable on such deposit. It is the money belonging to the appellant and has a right to withdraw it. There is a distinction between the amount appropriate towards duty and amount deposited for payment of a duty. In a former case duty which has only been levied and paid evidently becomes the property of the Government and no person would be entitled to get it back unless there is a provision of law to enable that person to get the duty already appropriated back from the State or the Government. In the latter case, however, when an amount has been deposited to be appropriated thereafter towards duty which may fall due there having no appropriation, the property in money does not pass to the Government unless the goods are cleared and the duty is levied. In present case the money deposited in PLA cannot be utilised due to withdrawal of Central Excise duty on Package Tea and Tea including Tea waste. The money belongs to the appellant over which the Department has no claim. The appeal deserves to be allowed. I therefore allow the appeal with consequential benefit to the Appellant."

· BIJALIMONI TEA ESTATE - 2007 (215) ELT 63 (TRI.-KOLKATA)

"Id. Counsel appearing for the appellants has submitted that there is only limited issue in these appeals to examine whether un-utilised deposit in PLA can be refunded to the depositor or not and whether such deposit is covered by Section 11B of the Central Excise Act, 1944.

2.*Facts of the case throws light that the appellants had made deposit of Rs. 50,000/- (Rupees Fifty thousand only) on 31-12-02 in United Bank of India (UBI), Siliguri towards discharge of the duty payable for removal of excisable goods. On 28-2-03, there was an un-utilised deposit amount of Rs. 14,251/- to the credit of the appellants and when the appellants made an application for refund of such amount by virtue of exemption of duty on Tea & Tea Waste w.e.f 1-3-03, the claim of the appellants was denied.*

3.*Id. DR for the Revenue submitted that if any refund of duty is claimed under Central Excise Act, 1944, due process of law as required under Section 11B of Central Excise Rules, 1944, should be followed and the authorities have rightly rejected claim for the appellant. Meeting to such point, the Id. Counsel has submitted that the Central Board of Excise & Customs has already issued instruction vide F. No. 202/24/72-CX. 6, dated 6-1-78, in consultation with the Ministry of Law to the effect that un-utilised amount in PLA is refundable to the appellants and relying on this instruction, the appellant submitted that this Bench has already decided such matter in the case of Jay Shree Tea & Industries Ltd. v. Commissioner of Central Excise, Kolkata reported in 2005 (190) E.L.T. 106 (Tri.-Kolkata).*

4.*On the basis of the above decision, the appellants cannot be denied of justice and cannot be un-equally treated under law. It is judicial discipline that demands that unless that order of this forum is stayed by higher Courts or reversed by any such Court, order of this forum shall prevail and that should be followed unhesitatingly. I am inclined to agree to uphold majesty of law and follow judicial*

discipline and allow the appeal since the issue is no more res integra.

5. Both the appeals are allowed."

In view of the above decision along with board circular dated 06.01.1973 the appellant is entitled for the refund of PLA balance and limitation provided under Section 11 B is not applicable.

5. As regard the decision cited by Learned AR in the case of Valson Polyester Ltd (Supra) on careful reading of the said decision I find that the said decision was passed without considering the earlier decisions of this Tribunal as cited above and also the board circular was not considered in the said judgment. Therefore, the Valson Polyester Ltd is not a good law and same is distinguished."

5. Relying on the aforesaid decision in appellants own case, the appeal is allowed.

(Dictated and pronounced in the open court)

PRACHI

(RAJU)
MEMBER (TECHNICAL)